

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 4:16CR310
)	
vs.)	
)	
BRENT SEE,)	
)	
Defendant.)	

- - - - -

TRANSCRIPT TRIAL TESTIMONY OF MATTHEW GARY,
WILLIAM SWIFT, AND STEVEN HOWARD, BEFORE
JUDGE DONALD C. NUGENT, JUDGE OF SAID COURT,
AND A JURY, ON WEDNESDAY, FEBRUARY 15TH, 2017,
COMMENCING AT 8:30 O'CLOCK A.M.

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8 and

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13 On behalf of the Defendant:

14 BETRAS, MARUCA, KOPP & HARSHMAN - CANFIELD
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Agent Gary - Direct

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MR. TOEPFER: Your Honor, we call
Special Agent Matt Gary.

MATTHEW GARY
called as a witness by and on behalf of the Government,
being first duly sworn, was examined and testified
as follows:

THE COURT: Tell us your full name, and
spell your last name.

THE DEFENDANT: Matthew Gary, G-a-r-y.
THE COURT: Thank you.

DIRECT EXAMINATION
BY MR. TOEPFER
Q. Agent Gary, what do you do for a living?
A. I am a Special Agent with the Bureau of Alcohol,
Tobacco, Firearms & Explosives.
Q. And how long have you been with ATF?
A. A little over eight years.
Q. Tell us about your education, training, and
experience?
A. I have a Bachelor's Degree in forensic science.
After that, I worked for the coroner's office in
Allegheny County as a death investigator. After that, I
worked approximately three years as a private

Agent Gary - Direct

1 investigator.

2 Then I went to the Department of Homeland
3 Security, Immigration of Customs Enforcement
4 for approximately three years before coming over to
5 ATF.

6 Q. What kind of specialized training do you have
7 regarding firearms?

8 A. I am a firearms instructor, so I show other agents
9 and help them with training as far as qualifying and
10 staying proficient with marksmanship.

11 Q. What I would like to do now is turn your attention
12 back to January 20th, 2016.

13 Did you meet with somebody named Brent See
14 that day?

15 A. Yes.

16 Q. Do you see him in the courtroom?

17 A. Yes.

18 Q. Would you point to him, and tell us what he is
19 wearing?

20 A. Sitting in front of me with the black suit and blue
21 and gray striped tie.

22 MR. TOEPFER: May the record reflect the
23 witness identified the Defendant?

24 THE COURT: It may.
25

Agent Gary - Direct

1 BY MR. TOEPFER:

2 Q. Where did you that take place?

3 A. That was at his residence.

4 Q. Which is where?

5 A. In East Palestine.

6 Q. Is that located within the Northern District of
7 Ohio, Eastern Division?

8 A. Yes.

9 Q. Why were you there?

10 A. We were following up on a tip regarding a tip that
11 we had received of Mr. See possibly making silencers.

12 Q. And what also information did you have?

13 A. We had a few photos provided from the individual who
14 gave us the tip and also that he had shown up at her
15 house to take receipt of a few packages that were shipped
16 to her address in his name.

17 Q. Did you have anybody with you when you went down to
18 visit him?

19 A. Yes.

20 Q. Who was with you?

21 A. Our task force officer, John Aeppli.

22 Q. What's a task force officer?

23 A. He is a member of the Youngstown Police Department
24 who is permanently assigned to the ATF.

25 Q. Tell us what happened when you got down there.

Agent Gary - Direct

1 A. We made contact with Brent See, and we went into his
2 workshop area. We spoke in the front room, which is like
3 an office and a computer room for a little while, about
4 life and what has been transpiring with him. He afforded
5 us an opportunity to look around his workshop so we went
6 in the back room where he has a CNC mill and CNC lathe
7 and other types of equipment.

8 At one point, I showed him the photographs
9 that the person that gave us the tip provided to me, and
10 he said they were not silencers, and they were legal to
11 make.

12 Q. Let's talk about those pictures for a moment. Can
13 we have the toggle for our computer, please?

14 Agent Gary, I would like to start by showing
15 you what has been previously marked as Government's
16 Exhibit 16. Can you tell us what this is?

17 A. Yes. It is one of the photos that I was provided.

18 Q. And one of the photos you took with you when you
19 went to see the Defendant that day?

20 A. Yes.

21 Q. Let's take a look, then, at Government's Exhibit 17.
22 What is that?

23 A. That's another photo that I was provided.

24 Q. Government's Exhibit 18, what is that?

25 A. Another photo that I was provided.

Agent Gary - Direct

1 Q. And Exhibit 19, what is that?

2 A. Another photo that I was provided.

3 Q. When you were talking with the Defendant at his
4 shop, did you see anything like the items depicted in the
5 four photos we just saw?

6 A. We saw metal scraps and pieces; nothing specifically
7 looking like those items.

8 MR. TOEPFER: Can we have the overhead,
9 please?

10 BY MR. TOEPFER:

11 Q. I am now going to show you Exhibits 1, 2, 3, and 4.
12 Did you see anything at the time you were meeting with
13 him that looked like these items in the shop?

14 A. No.

15 Q. So as you were having this discussion with him, did
16 you talk about firearm parts or things that he was making
17 in the shop?

18 A. Yes.

19 Q. Tell us about that.

20 A. He told us that he was intending to make something
21 for a firearm, some type of part. I don't remember what
22 he called it. At that point, I urged him, if he were to
23 make anything firearm related, that he should contact ATF
24 Firearms Technology Branch.

25 MR. BETRAS: Objection, your Honor.

Agent Gary - Direct

1 THE COURT: Overruled.

2 BY MR. TOEPFER:

3 Q. What is the ATF Firearm Technology Branch?

4 A. It is a portion of ATF that they cover the
5 scientific determination and analysis of firearms and
6 their classification.

7 Q. Why did you encourage him to contact those people?

8 MR. BETRAS: Objection, your Honor.

9 THE COURT: Overruled.

10 A. Based upon his probation, I wanted to make sure
11 if he were making anything firearm related, that he was
12 sure of what he was doing, and that he should contact
13 them.

14 Q. Now, you yourself working for the ATF, you mentioned
15 you are a firearms instructor.

16 Would you feel comfortable making a
17 determination whether or not something was a silencer
18 part?

19 A. No.

20 Q. If you had a question about that, who would you
21 contact about that?

22 A. ATF FTB.

23 Q. That's the ATF Firearms Technology Branch?

24 A. Yes.

25 Q. When you told him to contact the FTB, how did he

Agent Gary - Direct

1 respond?

2 MR. BETRAS: Objection.

3 THE COURT: Overruled.

4 A. He didn't respond. He just acknowledged it.

5 Q. Was this the first time you had this kind of
6 conversation with Mr. See?

7 A. Verbally, yes.

8 Q. Was there a time when you exchanged a couple of
9 e-mails with him?

10 A. Yes.

11 Q. If we could go back to the computer, I would like to
12 show you what has been marked as Government's Exhibit 29.
13 Can you tell us what this is?

14 A. Yeah. This is an e-mail string that we recovered
15 from his computer.

16 Q. And where it shows messages from Matthew Gary, ATF
17 Special Agent, is that your e-mail?

18 A. Yes.

19 Q. And e-mail from Brent See 76@Yahoo.com, who is that
20 e-mail address for?

21 A. That's for Brent See.

22 Q. Tell us what you said in this e-mail.

23 A. He had sent me several e-mails at which time I
24 finally responded to him, and I wrote "I would strongly
25 urge you to check with ATF Firearms Technology Branch to

Agent Gary - Direct

1 see if you are able to make these parts. They can be
2 contacted at 304-260-3414. They are the branch that
3 would make the determination anyways. Thanks."

4 Q. So at any time when you contacted him in person or
5 sent him this e-mail string, did you ever indicate to him
6 that parts that looked like Exhibits 1, 2, or 3, that it
7 was proper for him to make these things?

8 A. No. We had never seen those parts.

9 Q. At any point did you ever tell him that these were
10 legal?

11 A. No.

12 Q. Or that anything that looked like these were
13 legal?

14 A. No.

15 Q. I would like to now move ahead to June 29,
16 2016. Did you have a discussion with Ashley Frank that
17 day?

18 A. Yes.

19 Q. What did you learn from her?

20 A. She had informed me that she was out at the
21 residence or had just visited Brent See as part of a home
22 visit, and that she had discovered some items that she
23 thought were suspect of being a potential silencer.

24 Q. And would those have been Government's Exhibits 1,
25 2, 3, and 4 that we talked about already?

Agent Gary - Direct

1 A. Yes.

2 Q. What did you do with those when she gave them to
3 you?

4 A. I took photos of them and sent the photos to ATF
5 Firearms Technology Branch, who then requested to
6 physically examine those items.

7 Q. And did you send them out at some point?

8 A. I did.

9 Q. Based on your conversations that you had with FTB,
10 at that point, what did you learn?

11 A. They informed me that three out of the four that we
12 had sent to them were classified as silencers.

13 Q. Once you got that information, what did you do
14 next?

15 A. I consulted with a Federal Judge and obtained a
16 search warrant.

17 Q. For where?

18 A. For his address in East Palestine.

19 Q. And did you also have a search warrant that covered
20 the machine shop where he was working?

21 A. Yes.

22 Q. So let's jump ahead, then, to August 9, 2016. Is
23 that the day you executed the search warrant?

24 A. Yes, it is.

25 Q. And describe for us, generally speaking, what you

Agent Gary - Direct

1 found.

2 A. Generally, there was the workshop, looked to be
3 basically in the same condition as I had last visited.
4 There was a front entry way with a computer and a couple
5 of computers and a desk. That room goes back into the
6 workshop area. In the workshop area, there is a back
7 storage room, and there is also a connection through
8 to an adjoining business, which is an automotive
9 business.

10 Q. Did you take photographs when you were doing all
11 this?

12 A. Yes.

13 Q. Let's start by taking a look at Government's Exhibit
14 20. What does this show?

15 A. That's the front door area of the workshop
16 related to Brent See, See n See Tool and Machine, I
17 believe.

18 Q. Exhibit 21, what is this?

19 A. That's another photo of the front door of his
20 workshop.

21 Q. Exhibit 22.

22 A. That's a picture of the back room where he had all
23 of his machinery.

24 Q. 23?

25 A. That's in the same area. I am not sure if that's a

Agent Gary - Direct

1 CNC mill or CNC lathe.

2 Q. Exhibit 24, what's that?

3 A. That's in the same area as well, more equipment for
4 machining.

5 Q. Exhibit 25?

6 A. That's a photo of one of the eventual classified
7 silencers that was in the fabrication process.

8 Q. It is clearly still in the machine at this
9 point?

10 A. Yes.

11 Q. Exhibit — is this 25 or 26?

12 A. That's a closer up view of the same item.

13 Q. Exhibit 27?

14 A. This is the storage bins. As you walk in the front
15 door, there is a counter to the left-hand side, and then
16 there is several of these bins with items that were
17 eventually classified as silencers.

18 Q. And then Exhibit 28?

19 A. An item classified as a silencer that was found in a
20 toolbox.

21 Q. What did you do with these items after you saw
22 them?

23 A. We photographed them, and then we collected them.

24 MR. TOEPFER: Your Honor, could I ask Agent
25 Gary to step down for a moment?

Agent Gary - Direct

1 THE COURT: Sure.

2 BY MR. TOEPFER:

3 Q. Agent Gary, I want to start by showing you what is
4 Government's Exhibit 5. Can you tell us what this is?

5 A. Yes. This bag is basically one of the storage bins.
6 We put them in a plastic bag to recover them. We just
7 did that to make it easier to count them back at the
8 office, but these were suspected silencers.

9 Q. Exhibit No. 6?

10 A. Same thing basically, just in a different bin. We
11 took each bin and put them in a bag.

12 Q. Exhibit No. 7?

13 A. Same, suspected silencers.

14 Q. So basically, each bag represents a separate bin
15 that you were pulling these out of. Is that fair to
16 say?

17 A. I believe so. They may have been combined at some
18 point but generally speaking.

19 Q. So then Exhibits 8, 9, and 10?

20 A. Yes. Some are a little bit larger in size, and they
21 were kind of separated in the bins as far as size.

22 Q. Exhibit No. 11 and 11 A?

23 A. 11 are suspected silencers. 11 A, after we sent
24 them to the lab, they determined that this one was not a
25 silencer.

Agent Gary - Direct

1 Q. Exhibit 12 and 12-A?

2 A. 12, after we sent it to the lab, 12, they determined
3 it was a silencer. 12-A was not a silencer.

4 Q. Exhibit 13?

5 A. Exhibit 13 is also a suspected silencer.

6 Q. Exhibit 14?

7 A. The same, suspected silencer.

8 Q. And for all these Exhibits 5 and through and
9 including Exhibit 14, were these all found inside the
10 shop that day?

11 A. Yes, sir.

12 Q. Tell us about Exhibit No. 15.

13 A. Exhibit 15 was found in this packaging in the
14 mailbox that we were able to find one package, and we
15 felt it was a silencer as well, and it was determined
16 that it was.

17 Q. And do all these items appear to be in substantially
18 the same condition as the day you seized them from the
19 shop?

20 A. Yes.

21 Q. Okay. Go ahead and sit back down.

22 BY MR. TOEPFER:

23 Q. So after you collected all these items, what did you
24 do with them?

25 A. We took them back to the office and put them into

Agent Gary - Direct

1 our computer system and into our evidence vault.

2 Q. What did you do after that with them?

3 A. Eventually, we sent them to ATF Firearms Technology
4 Branch who made a formal classification of those
5 items.

6 Q. Now, did you learn how the Defendant was selling
7 these items?

8 A. Yes, on eBay.

9 Q. Did you obtain any records from eBay to verify what
10 was being sold and how long it was being sold?

11 A. I did.

12 Q. Let me, I would like to then show you Exhibit No.
13 31. This is a 28-page document. Can you tell us what
14 this is?

15 A. Yes. That's the front page of the documents
16 provided from eBay related to See n See Tool Machine,
17 which is the ID number he used.

18 Q. And if we can jump to page 3 of this document.

19 MR. BETRAS: I'm sorry? What page are you
20 on, Mr. Toepfer?

21 MR. TOEPFER: Should be No. 3.

22 BY MR. TOEPFER:

23 Q. If we look, for example, at just this bottom
24 line here of the portion that has been highlighted,
25 can you describe for us the information that is listed

Agent Gary - Direct

1 there?

2 A. Yes. The spreadsheet provided from eBay had the
3 following information: The user ID, which is See n See
4 Tool Machine; has the description of what was listed on
5 eBay and the section that is highlighted. It is a .22
6 caliber 223 Super Guild muzzle brake, slant slide ports,
7 one and a half by 28 pitch.

8 The next line item over, I believe, is how
9 many were being sold, and then after that, it was how
10 many purchased and then the purchase price. It could be
11 the listing price, I am not sure, and also the date and
12 who had purchased them.

13 Q. So based on this record here, they were certainly
14 being sold in June of 2015.

15 Do you know when the first one went out
16 according to the eBay records?

17 A. I believe April —

18 Q. Of 20 —

19 A. — 2015.

20 Q. And then, if we could jump down to page 28 of this
21 document — I'm sorry — not page 28. Hold on one
22 second. Excuse me.

23 If we can take a look at the last couple of
24 lines, the spreadsheet on page 20.

25 MR. BETRAS: Page 20, Mr. Toepfer?

Agent Gary - Cross

1 MR. TOEPFER: Yes.

2 BY MR. TOEPFER:

3 Q. According to this, when is the last time something
4 was sold over eBay described as a muzzle brake?

5 A. August 9th, 2016, was the sale end date and time
6 there, and that was the same date that we executed the
7 search warrant.

8 Q. And refers to some dates and times in July as well.
9 What are those dates and times?

10 A. That would be the sale start date, which is when I
11 believe he actually posted it to eBay for sale.

12 Q. But then it went out on August 9th?

13 A. Yes.

14 MS. HENDERSON: Can I have a moment, your
15 Honor?

16 THE COURT: You may.

17 (Pause.

18 MR. TOEPFER: Thank you. Nothing further.

19 THE COURT: Thank you. You may
20 cross-examine.

21 MR. BETRAS: Thank you.

22 CROSS EXAMINATION

23 BY MR. BETRAS

24 Q. You are not an expert in determining whether
25 something is a silencer or not, correct?

Agent Gary - Cross

1 A. That's correct.

2 Q. And when you looked through my client's eBay
3 records, it is fair for me to say that all of these items
4 here were marketed and told to the public as being muzzle
5 brakes, correct?

6 A. I believe based upon the description of what he had
7 wrote in eBay.

8 Q. Correct. He didn't say to anyone on eBay these were
9 silencers or silencer parts, correct?

10 A. He didn't describe them as silencer parts. Part of
11 the description he did provide is it would produce a low
12 tone.

13 Q. And it would reduce the recoil?

14 A. Yes.

15 Q. Okay. Did you personally yourself test fire any
16 of these to determine whether they muffled any of the
17 sound?

18 A. No.

19 Q. Did your expert, to your knowledge, test fire any of
20 these parts to determine whether or not they muffled any
21 of the sounds?

22 A. No. He didn't feel it was necessary because —

23 Q. So the answer is no?

24 A. No.

25 Q. And when you were inspecting my client's shop, you

Agent Gary - Cross

1 didn't find any outer tubings. Am I correct?

2 A. There were tubes there, but it didn't look like
3 anything that could be attached to that readily.

4 Q. Do you know anything about aluminum and aluminum
5 welding?

6 A. Very basic knowledge.

7 Q. Do you know anything about the fact — if I could
8 put this on.

9 THE COURT: Do you want that on, Dave?

10 MR. BETRAS: Yes, your Honor. I am sorry.

11 BY MR. BETRAS

12 Q. I think this is Government's Exhibit 1. You would
13 agree with me that on either end of these there is no lip
14 to attach an outer tubing.

15 A. I can't see if there is like an inside part that it
16 would be threaded or not.

17 Q. I am talking about the outside, to slide over it.

18 A. No.

19 Q. There is no threading over here, correct?

20 (Indicating.)

21 A. Correct.

22 Q. And there is no threading up here, correct?

23 (Indicating.)

24 A. Correct.

25 Q. And do you know whether or not the machining is

Agent Gary - Cross

1 precise or imprecise?

2 A. I do not.

3 Q. Would it matter to you whether the machining of
4 these was precise or imprecise?

5 A. No.

6 Q. Do you understand, so you are not a machinist is
7 what you are saying?

8 A. No.

9 Q. And you wouldn't know how to even construct a tubing
10 to go on the outside of this, would you?

11 A. I would imagine that there is a way to put a tube
12 over it.

13 Q. Do you know for sure?

14 A. No.

15 Q. Okay.

16 A. No.

17 Q. You could put a potato over this, couldn't you?

18 A. I guess you could.

19 Q. You could put a pillow over that, couldn't you?

20 A. Yes.

21 Q. You could put a potato on the end of a gun, and that
22 would silence the sound, wouldn't it?

23 A. Potentially.

24 Q. You have seen examples where they have taken oil
25 cans and put them on the end of guns to silence the guns,

Agent Gary - Cross

1 correct?

2 A. Yes.

3 Q. My point is, it all goes to whether or not what's
4 the purpose or the intention of the person making
5 the part or what they intended it to be for,
6 correct?

7 A. I am not sure what his intentions were.

8 Q. Well, you do know some things of his intention,
9 officer. That's not true. You looked at his eBay
10 records, correct?

11 A. Yes.

12 Q. And you were able to tell the jury these were
13 marketed as muzzle brakes, correct?

14 A. Yes.

15 Q. All right. So you know a little bit about his
16 intention then, and his intention, at least from the
17 records you examined, that they were being marketed as
18 muzzle brakes, correct?

19 A. Correct.

20 Q. All right. So when you say you didn't know
21 any of his intention, that's not entirely accurate,
22 is it?

23 A. Well, just from my experience, people that have
24 marketed things as such, you are not going to market
25 something as a silencer on eBay. You are probably going

Agent Gary - Cross

1 to put something different.

2 Q. How about, did you get into any of his e-mails where
3 he was giving me instructions on tubing, how to fashion a
4 tubing over this part. You could tell the jury about
5 those e-mails, right?

6 A. I don't recall any of those e-mails.

7 Q. You don't recall any of those e-mails.

8 Is it possible or more probable you don't
9 recall any of those e-mails because none of those e-mails
10 exist, correct?

11 A. I am not sure if they do exist.

12 Q. Well, you got his computer, didn't you?

13 A. Yes.

14 Q. And you went through his computer, didn't you?

15 A. We sent it to an expert who made a report of it.

16 Q. All right. And one of the things I am assuming
17 you told the expert to do is look for evidence to
18 see what this guy's intention was to make a silencer,
19 right?

20 A. He did his own examination. It wasn't really
21 directed on searching for anything in particular.

22 Q. Well, wait a minute. Wait a minute, officer.

23 You are investigating my client with the
24 allegation that it was his intention to make a silencer.
25 That's correct, isn't it?

Agent Gary - Cross

1 A. Yes.

2 Q. And you get a computer that potentially has evidence
3 on there to determine whether or not his intention was to
4 make a silencer, correct?

5 A. Well, the possession of it —

6 Q. You grabbed my client's computer, correct?

7 A. Yes.

8 Q. You didn't do nothing with it. You sent it
9 somewhere, correct?

10 A. Correct. I also looked —

11 Q. You sent it to whoever does your forensic analysis,
12 correct?

13 A. Yes.

14 Q. And you said "do nothing to them? Here, have fun
15 with it"?

16 A. They will do a general — I mean, they know what to
17 look for because they are affiliated with ATF.

18 Q. Okay. So they are affiliated with ATF, and your
19 position is, they know what to look for.

20 Tell the jury about the e-mails that you
21 found where my client is giving a person any instruction
22 on how to put a tubing over this muzzle brake.

23 A. I don't believe that we viewed any of those
24 e-mails.

25 Q. Because there weren't any, isn't that a fact?

Agent Gary - Cross

1 A. I am not sure.

2 Q. Well, if they were, we would be talking about them,
3 wouldn't we? If you had evidence that my client was
4 giving instructions on how to put tubing over this,
5 you would be telling this jury about that, wouldn't
6 you?

7 A. I didn't see those e-mails.

8 Q. And you were not told of those e-mails, were you?

9 A. Correct.

10 Q. And when you talked to my client, he was shocked
11 about this, wasn't he?

12 A. Yes.

13 Q. Because he said "I am not making a silencer; I am
14 making a muzzle brake," right? That's what he told you
15 at that point in time when you were at his shop.

16 A. That's what he told me.

17 Q. And he protested his innocence, didn't he?

18 A. He wanted to — he wanted to find out why they were
19 considered silencers.

20 Q. The point, officer, is what you were able to
21 ascertain and glean from my client is he didn't believe
22 that they were a silencer, and he didn't believe that
23 they were a silencer part based on your observations and
24 your conversations with him. That's accurate for me to
25 say, isn't it?

Agent Gary - Cross

1 A. I am not sure what his intentions were.

2 Q. Okay. How about what he said to you?

3 A. He said that they were muzzle brakes.

4 Q. And that he was — is it fair to say he was
5 incredulous, that you thought they were otherwise? He
6 was shocked.

7 A. He was shocked.

8 Q. He was shocked that you thought he was making a
9 silencer, correct?

10 A. Yes.

11 Q. Now, do you remember the Government asking you
12 questions about all those eBay records?

13 A. Yes.

14 Q. And you have a book up there so we can take a look
15 at the same thing. It is a white book. Do you want to
16 go to Exhibit 31? I just pulled out the first page just
17 as an example.

18 All right. So let's go to item No. 55
19 there. Do you see No. 55 there?

20 A. Yes.

21 Q. All right. 55, it says See n See Tool, that's from
22 him, correct?

23 A. Yes.

24 Q. And it is a Super Gilded Muzzle Brake, correct?
25 That's what it is advertised as, right?

Agent Gary - Cross

1 A. Is it the one below the cursor?

2 Q. Yeah.

3 A. Yes. .22, 223 Caliber Super Guild Muzzle Brake with
4 14 side ports 1/2.

5 Q. And it says "the total number available is five,"
6 correct. If you go up to the top there, it says quantity
7 available, five, right there. (Indicating.)

8 A. Yes.

9 Q. And that gives the price of it of \$52, correct?

10 A. Yes.

11 Q. All right. Now, you had said you were at my
12 client's — by the way, tell the jury where in the law it
13 says that my client has to get approval from the ATF
14 before he manufactures anything.

15 Can you tell us or tell the Judge or tell
16 the U.S. Attorney where in the law that is?

17 A. In order to manufacture firearms or —

18 Q. No, no. You want to make issue of the fact that my
19 client didn't seek approval of you, correct, or approval
20 of the ATF?

21 A. I am not trying to make issue of it.

22 Q. Okay. Let me ask you this: You said that my client
23 sent you an e-mail, and that you told him to go seek
24 approval from the ATF, correct?

25 A. Yes, because —

Agent Gary - Cross

1 Q. All right. Okay.

2 Now, if my client is not making a part that
3 is covered by the Federal Firearms Act, does he need to
4 seek approval of anyone? He could just do it and would
5 be violate the law. There is no preapproval process for
6 the ATF.

7 A. If it is not covered under law as being a firearm or
8 silencer, then, no.

9 Q. Okay. And so if my client didn't feel that he was
10 making a part that was covered by the Federal Firearm
11 Act, there would be no need for him to seek approval,
12 correct?

13 A. I urged him to do so, so he would —

14 Q. I know you urged him to do so, but your answer to my
15 question was, if he felt that he was making something
16 covered by the Federal Firearm Act, he should have
17 gotten approval, and he didn't seek that approval,
18 correct?

19 A. Correct. He did not seek approval.

20 Q. So the reverse of that is true, is at least evidence
21 that he didn't think or intend that he was making a part
22 that was covered by the Federal Firearm Act. That's a
23 fact, correct?

24 A. I am not sure what he was thinking.

25 Q. We know you told him to seek approval, correct?

Agent Gary - Cross

1 A. Correct.

2 Q. And we know he only has to seek approval if he is
3 manufacturing something covered by the Federal Firearms
4 Act, correct?

5 A. Correct.

6 Q. And we know that he did not, in fact, contact the
7 ATF to find out whether or not these parts were permitted
8 or not, correct?

9 A. Can you say that again?

10 Q. I wished I could. I know I get nervous. Can you
11 repeat that? (Directed to the reporter.)

12 THE REPORTER: "Question: And we know that
13 he did not, in fact, contact the ATF to find out whether
14 or not these parts were permitted or not, correct?"

15 A. He later acknowledged that he did not, but I'm not
16 sure if he took steps to do so.

17 Q. That doesn't answer my question.

18 The answer to the question is: He did not
19 seek approval of the ATF, right?

20 A. Correct.

21 Q. And you have testified now that you don't have to
22 seek approval of the ATF if you are not making a firearm
23 part, correct?

24 A. Yes.

25 Q. All right. So it would be logical to think if a

Agent Gary - Cross

1 person is not making a firearm part, that there is no
2 need to contact the FBI — I mean the ATF to seek
3 approval, correct?

4 A. You wouldn't need to. It would be recommended.

5 Q. So my point I am trying to drive home, that is
6 certainly some evidence of his intention, wouldn't you
7 agree?

8 A. It depends.

9 Q. It depends? Let me go now to another part or
10 exhibit. This is Government's Exhibit 16. Do you have
11 any idea what that is?

12 A. It is some machine parts that have the description
13 of freeze plug forming in center fixture, mag light D
14 cell solvent trap tool.

15 Q. Do you know, in fact, that's a part my client
16 manufactured for use in an automobile part? This
17 nefarious thing that you were told about was an
18 automobile part. Do you know that?

19 A. I am not sure.

20 Q. But this was the part that raised someone's
21 suspicion, correct?

22 A. Yes.

23 Q. And that anonymous person, that anonymous person
24 happened to be my client's ex-wife. Isn't that a
25 fact?

Agent Gary - Cross

1 A. Yes.

2 Q. And so my client's ex-wife contacted the FBI and
3 said "oh, my gosh, look at what my ex-husband is doing
4 here. He is making auto parts," and that's when you went
5 out and saw these things here, correct?

6 A. She contacted me with ATF.

7 Q. Yeah. And no one has told you that any of these
8 things are anything but 100 percent legal, correct?

9 A. The lab has told me parts similar to this have been
10 used in the fabrication of silencers. They will use
11 parts such as solvent, trap tools and mag light-type
12 devices to make silencers.

13 Q. Right. But you didn't find any evidence of that,
14 right?

15 A. No.

16 Q. So the testimony is correct, this Exhibit 4 — this
17 Exhibit 4, they said this is not a silencer, right, a
18 silencer part?

19 A. Yes. It was not classified as a silencer.

20 Q. But this is a silencer part, correct? (Indicating.)

21 A. Yes.

22 Q. And I guess I would have to ask your expert, is it
23 because these push the gas back, right? I mean, the only
24 difference really in them is the way they are directing
25 the gases that come out of the firearm, correct?

Agent Gary - Cross

1 A. I would have to defer to the expert.

2 Q. Okay.

3 MR. BETRAS: One second, your Honor.

4 BY MR. BETRAS

5 Q. You would agree with me, would you not, that a
6 muzzle brake is not covered by the Federal Firearms Act,
7 correct?

8 A. It would not be classified as a silencer. So it
9 wouldn't be under the NFA, correct.

10 Q. So the answer to my question is that a muzzle brake
11 is not a firearm, correct?

12 A. Correct.

13 Q. Have you gone on to the internet to look up
14 "muzzle brakes" yourself at all in your research of this
15 case?

16 A. Just a little bit.

17 Q. And is it fair for me to say you saw designs like
18 both of these designs for muzzle brakes?

19 A. I haven't. I'm just referring to what the experts
20 at FBI had told me.

21 Q. I'm talking you yourself. Have you gone to your
22 Google thing as an ATF agent and put in the word "muzzle
23 brake"?

24 A. I have in the past.

25 Q. And there are all kinds of designs, aren't

Agent Gary - Cross

1 there?

2 A. Yes.

3 Q. And a muzzle brake for the members of the jury, like
4 in a tank, on the end of a tank is a muzzle brake,
5 right?

6 A. I don't know if it would be a muzzle brake or flash
7 suppresser.

8 Q. But the point is, it is supposed to help the
9 recoil.

10 A. Yeah. That's the idea of a muzzle brake.

11 Q. You were there when our expert Steve Howard test
12 fired the weapon, were you not?

13 A. Yes.

14 Q. And you witnessed the recoil with this muzzle brake
15 on it and without the muzzle brake on it. You witnessed
16 that, did you not?

17 A. I did.

18 Q. And you could tell the jury that when this was on
19 the end of the rifle there was less recoil. That's a
20 fact, correct?

21 A. I would have to let him tell you that. I am not
22 sure they measured how much it kicked back.

23 Q. Well, you were there, officer. You saw it,
24 correct?

25 A. We provided the evidence.

Agent Gary - Cross

1 Q. And you were there. You saw him hanging the weapon.
2 Do you want me to show it to you?

3 A. You can.

4 MR. BETRAS: One second, your Honor. Your
5 Honor, does the Court have the ability to play the CD?

6 THE COURT: No.

7 MR. BETRAS: That doesn't help much.

8 BY MR. BETRAS

9 Q. Let me ask it this way: Were you able to witness
10 the test fire?

11 A. Yes.

12 Q. Did you see when my client, when my expert Steve
13 Howard fired the weapon, that he had a yardstick on the
14 ground and a yardstick in the air, correct?

15 A. Yes.

16 Q. And you saw less recoil once he put one of these
17 devices on the end as opposed to when he did not. Is
18 that fair? That's a fair statement, right?

19 A. I am not sure. They videoed — they took video of
20 it to show how much it was swinging back. The gun was
21 put on stings and showed how much it swung back after
22 being test fired.

23 Q. Okay.

24 MR. BETRAS: Thank you, your Honor.

25 THE COURT: Anything further, Mr. Toepfer?

Agent Gary - Redirect

1 MR. TOEPFER: Your Honor, can we approach
2 for a minute? I think there is a matter we need to
3 discuss.

4 THE COURT: Sure.

5 (Discussion held off the record.)

6 THE COURT: Are you going to be very long?

7 MR. TOEPFER: No, sir.

8 THE COURT: I don't want to keep the jury
9 from lunch too long.

10 REDIRECT EXAMINATION

11 BY MR. TOEPFER

12 Q. Agent Gary, this is not the first time you met
13 Mr. See, was it?

14 A. No.

15 Q. In fact, you previously investigated him for selling
16 and manufacturing silencers in the past?

17 A. Yes.

18 Q. In your prior investigation, did you buy silencers
19 through eBay from the Defendant?

20 A. I purchased multiple silencers in an undercover
21 capacity through his eBay sales.

22 Q. In the eBay records or the eBay sales he made of
23 those prior silencers, were they ever marketed as a
24 silencer?

25 A. No. They were called solvent traps, I believe.

Agent Gary - Redirect

1 Q. And how many did you buy from him?

2 A. Three or four.

3 Q. Were those all through eBay?

4 A. Yes.

5 Q. Were any of those marketed as silencers?

6 A. No.

7 Q. You mentioned in your experience people would not
8 typically market something as a silencer or silencer
9 part. Why not?

10 A. You would immediately raise a red flag.

11 Q. With whom?

12 A. All the customers, eBay, whoever is the
13 administrator of the site. They would probably not allow
14 you to sell items known as a silencer on eBay.

15 MR. TOEPFER: Thank you, nothing further.

16 THE COURT: Anything further based on that.

17 MR. BETRAS: No.

18 THE COURT: You may step down. Let's take
19 our luncheon recess, and it is almost 12:30. Let's meet
20 on L1 at 1:45, and that gives you an hour and 15 minutes.

21 As was mentioned earlier, you can go to the
22 lunchroom on 7 or go to Tower City, do what you want.
23 Keep in mind the admonition. You heard some evidence.
24 You haven't heard it all. You certainly don't know what
25 the law is that applies in the case.

Agent Gary - Redirect

1 Keep an open mind, and don't form or express
2 any opinion about the case. You can't talk among
3 yourselves nor with anyone else. If you do tell anybody,
4 as I said earlier, what you are doing, you can say you
5 have been selected as a juror. Don't tell them what kind
6 of case it is or the nature of the case.

7 So enjoy lunch. If you run into people,
8 too, that's the other thing, if they just say good
9 morning or good afternoon or whatever it is, you know
10 why, so a word to the wise.

11 So we will call for you at 1:45 where? Ll,
12 right, not up here. See you then.

13 (Luncheon recess taken.)

14 - - - - -

15 * * * * *

16
17 MR. TOEPFER: Your Honor, we will call
18 William Swift.

19 MR. BETRAS: Your Honor, may we approach a
20 second?

21 THE COURT: Sure.

22 (Side bar discussion held off the record.)

23 THE COURT: Sir, would you raise your right
24 hand for me?

25

Agent Swift - Direct

1 WILLIAM J. SWIFT

2 called as a witness by and on behalf of the Government,
3 being first duly sworn, was examined and testified
4 as follows:

5 THE COURT: Tell us your full name, and
6 spell your last name.

7 THE DEFENDANT: My name is William James
8 Swift. Last name is S-w-i-f-t.

9 THE COURT: Thank you. Go ahead.

10 DIRECT EXAMINATION

11 BY MR. TOEPFER

12 Q. Sir, would you please tell us what you do for a
13 living?

14 A. I am a firearms enforcement officer with the Bureau
15 of Alcohol, Tobacco, Firearms & Explosives.

16 Q. And how long have you been with the ATF?

17 A. Almost seven years.

18 Q. What is a firearms enforcement officer?

19 A. Firearms enforcement officer provides technical
20 information regarding the classification of firearms and
21 ammunition under federal law.

22 Q. Before we get into that specific job, I would like
23 to start by talking about what you did before you joined
24 the ATF.

25 Did you ever serve in the military?

Agent Swift - Direct

1 A. Yes, I did. I served the United States Army as a
2 19 Delta Calvary scout for three years.

3 Q. And what does a 19 Delta Calvary scout do?

4 A. It is reconnaissance.

5 Q. And tell us about one of the first jobs you had
6 after leaving the military.

7 A. I worked in a machine shop, Accurate Machine & Tool
8 in Madison, Alabama, as a tool crib manager.

9 Q. I'm sorry?

10 A. As a tool crib manager.

11 Q. What did they do in that shop?

12 A. It was manufacturing. They had manual CNC, lathes,
13 milling machines.

14 Q. What were your duties there as a manager?

15 A. I was responsible for accepting and transferring of
16 various tooling, including bar stock, drills, end mills,
17 carbide cutters, and the like.

18 Q. And about how long were you there?

19 A. Approximately six months.

20 Q. What was the next job you had after that?

21 A. I was a store manager of JCs Gun & Tackle located in
22 Huntsville, Alabama.

23 Q. And what were your duties there?

24 A. I was a primary purchaser for inventory and primary
25 seller of firearms.

Agent Swift - Direct

1 Q. How long did you work at the gun store?

2 A. Twelve years.

3 Q. While you were working at the store, did you have
4 any experience in repairing firearms?

5 A. Yes, I did.

6 Q. Tell us about that.

7 A. As a gun shop, we would take in guns that customers
8 needed to be repaired they were either disassembled, they
9 weren't working right, and we would repair them.

10 Q. Did you have any experience machining parts for
11 guns?

12 A. Yes.

13 Q. Tell us about that.

14 A. On occasion, say an old or antique firearm or
15 something that parts aren't available for, I would make
16 the parts to fit the firearm.

17 Q. How often would you do that?

18 A. Four or five times a month.

19 Q. While working at the gun shop, were you going to
20 college as well?

21 A. Yes.

22 Q. And where did you go?

23 A. Athens State, Alabama, and studied business
24 administration.

25 Q. Did you get your degree?

Agent Swift - Direct

1 A. Yes, sir, I did.

2 Q. When did you get your degree?

3 A. 2004.

4 Q. So let's talk now about your duties at ATF. Give us
5 more specific details what you do as a firearms
6 enforcement officer.

7 A. Like I said earlier, we provide technical
8 information where the Department of Justice and the
9 Government's technical authority on what is a firearm and
10 what is not a firearm or how an item is or is not
11 regulated under federal firearms laws. As duties as a
12 firearms enforcement officer we train special agents and
13 investigator at FLETC down in Glynco, Georgia, in
14 firearms, identification, and how they function.

15 Q. Have you received any kind of specialized training
16 since joining the ATF?

17 A. Yes, I have.

18 Q. Have you received any training about firearms, how
19 they are made?

20 A. Yes, I have.

21 Q. Tell us about that.

22 A. Part of the training and continual training of a
23 firearms enforcement officer is to know what a firearm is
24 under federal law, and with that, we tour various
25 manufacturing, firearms manufacturing facilities to see a

Agent Swift - Direct

1 piece of metal become a firearm and a regulated item
2 under federal law.

3 Q. You said you toured factories. Do you know about
4 how many you have toured?

5 A. Nineteen.

6 Q. Can you give us an example of some of the bigger
7 named manufacturers you visited?

8 A. Smith & Wesson, Colt, Ruger, Savage, Mossberg, North
9 America Arms, LWRC. There is a lot of them.

10 Q. And what's the purpose of going to an onsite
11 manufacturer like that?

12 A. You get the experience of seeing the firearm made,
13 and you get a historical perspective of the company;
14 also, with regard to how the firearm is made, what
15 firearms that company has made, and maybe the process has
16 changed over the years. So if you saw one of those types
17 of firearms in my job, you would be able to determine it
18 is a firearm, who made it, when it was made, things like
19 that.

20 Q. As part of your training, have you yourself had to
21 make a firearm?

22 A. Yes.

23 Q. Tell us about that.

24 A. I have made an AR 15 type firearm receiver utilizing
25 a drill press and a milling machine.

Agent Swift - Direct

1 Q. You mentioned earlier that part of your duties are
2 to conduct training courses for other agents, other law
3 enforcement officers.

4 Tell us about those courses and the kinds of
5 topics you discuss there.

6 A. In the special agent portion of firearms training
7 that we give at ATF, it is more of firearms
8 identification, assembling and disassembling how a
9 machine gun functions, for instance, what a silencer is,
10 what a destructive device is, what is ammunition, what is
11 not, things like that.

12 Q. Do you have any training related to the Gun Control
13 Act or the Federal Firearms Act?

14 A. Yes.

15 Q. What do you know about those?

16 A. The Gun Control Act of 1968 was enacted to regulate
17 firearms where it required markings on firearms. It
18 required you to be licensed, and as a person engaged in
19 the business of firearms, you could no longer mail order
20 through the gun and have a gun shipped to your house.

21 Q. Are you familiar with the definition of "firearm"
22 under federal law?

23 A. Yes, I am.

24 Q. What is a firearm?

25 A. A firearm under federal law found in 18 U.S. Code,

Agent Swift - Direct

1 Section 921, their definition is "any weapon which will
2 or is designed to or may readily be converted to expel a
3 projectile by the action of an explosive." Its
4 definition includes "a firearm silencer, the frame or
5 receiver of a firearm, and a destructive device."

6 Q. When you talk about "frame and receiver," are those
7 parts of a firearm?

8 A. Yes.

9 Q. And since we are talking about a firearm, are you
10 familiar with the definition of silencer under federal
11 law?

12 A. Yes.

13 Q. What is that?

14 A. Again, under 921, the definition section, definition
15 No. 24 is "any device for silencing, diminishing,
16 muffling the report of a portable firearm, any
17 combination of parts designed or redesigned intended for
18 use in assembling or fabricating of a firearm silencer."

19 Q. Does the definition then of a silencer include just
20 assembled devices or parts of those devices?

21 A. The assembled device, a combination of parts from
22 which one can be assembled, and a third part I didn't
23 mention is any part used only in the assembly or
24 fabrication of a firearm silencer.

25 Q. Now, have you had any experience in trying to

Agent Swift - Direct

1 stay current with case study, case law, things of that
2 nature?

3 A. Yes, sir, I have.

4 Q. Tell us how that is.

5 A. In part of our training and how we make
6 classifications we stay up to date on current litigation,
7 lawsuits or court rulings, which might impact a possible
8 classification of things we are looking at.

9 Q. Are you familiar with case studies involving
10 monolithic baffling?

11 A. Yes.

12 Q. Tell us about that.

13 A. I am familiar with SIG Sauer versus Beta Jones.

14 MR. BETRAS: Objection.

15 THE COURT: Overruled.

16 Q. Please continue.

17 A. In this case, a SIG Sauer, a firearms manufacturer,
18 located in New Hampshire, submitted a firearm, a rifle
19 with a device welded to the muzzle. ATF evaluated the
20 rifle and found it to be a monolithic baffle, a part used
21 in assembling or fabrication of a firearm silencer.

22 Q. So how would that case affect you going forward in
23 classifying silencers or silencer parts?

24 A. Well, after the appeal of SIG Sauer versus
25 Tom Brandon, the court held a monolithic baffle is a

Agent Swift - Direct

1 silencer part and, thus, a silencer. We were instructed
2 by ATF counsel that if this item is seen with these
3 characteristics and design features, it would be
4 classified and should be classified as a firearm
5 silencer.

6 MR. BETRAS: Objection. Move to strike,
7 your Honor.

8 THE COURT: Overruled.

9 BY MR. TOEPFER:

10 Q. Officer Swift, have you in your experience at ATF
11 had an opportunity to inspect silencers or silencer parts
12 in the past?

13 A. Yes, I have.

14 Q. On approximately how many occasions have you done
15 that?

16 A. Hundreds.

17 Q. Are those part of your assigned duties at ATF?

18 A. Yes, they are.

19 Q. What's the process you go through in classifying
20 whether something is a silencer or silencer part?

21 A. We look at the physical characteristics of the item,
22 note the physical dimensions of the item, and make a
23 comparison of that item, whether it is a part or
24 combination of parts or a whole device to a known
25 silencer or silencer part from our National Firearms

Agent Swift - Direct

1 Reference Collection.

2 Q. What is the National Firearms Reference Collection?

3 A. It is a working reference collection of over 14,000
4 firearms, which include silencers, machine guns, grenade
5 launchers, revolvers, pistols, and shotguns.

6 Q. Where is that kept?

7 A. In our office in Martinsburg, West Virginia.

8 Q. If you have a part that comes in for examination,
9 would you test fire it?

10 A. A part?

11 Q. Yes.

12 A. No.

13 Q. Why not?

14 A. Because a part in and of itself using assembly and
15 fabrication of a firearm silencer is a silencer.

16 Q. So why can you get away with just doing then your
17 visual inspection?

18 A. Definition of silencer includes a device for
19 silencing, diminishing, or muffling a report of a
20 portable firearm.

21 Q. How many other firearms enforcement officers work
22 with you at ATF?

23 A. Eleven others.

24 Q. And the process that you've described for us about
25 how you inspect and classify firearms, silencers,

Agent Swift - Direct

1 silencer parts, is that the same process that all the
2 other enforcement officers use?

3 A. Yes.

4 Q. Is that the accepted method that you use at the
5 Firearms Technology Branch?

6 A. Yes.

7 Q. Now, along those lines, does ATF ever respond to
8 inquiries from the general public about the nature of
9 firearms, firearms parts?

10 A. Yes, they do.

11 Q. If somebody has a question about that, what would
12 they do?

13 A. If they had a question regarding something is
14 regulated under federal firearms laws, they could write
15 our office and ask the question or call us, or they could
16 e-mail us and ask the question that way.

17 Q. Are part of your duties responding to those
18 inquiries?

19 A. Yes.

20 Q. How often do you respond to questions of that
21 nature?

22 A. Daily.

23 Q. When a question like that comes in, does ATF keep a
24 record of the information?

25 A. Yes, they do.

Agent Swift - Direct

1 Q. What information is recorded?

2 A. They record the incoming inquiry and the response to
3 the individual or company.

4 Q. Are those records made or kept at or about the time
5 those questions come in?

6 A. Yes.

7 Q. And at or about the time the answer goes out?

8 A. Yes.

9 Q. Is that something that is done in the ordinary
10 course of your business there at ATF?

11 A. Yes, it is.

12 Q. Where are those records maintained?

13 A. In our office at Martinsburg, West Virginia.

14 Q. Prior to coming in here today, did you have an
15 opportunity to look through those inquiries, to see if
16 you ever got one from somebody named Brent See?

17 A. Yes, I did.

18 Q. Did the Firearms Technology Branch ever get an
19 inquiry from somebody name Brent See about firearms,
20 firearms parts, silencers, or silencer parts?

21 A. No.

22 Q. Now, have you ever testified before as an expert in
23 the area of firearms?

24 A. Yes, I have.

25 Q. How many times have you been called in to testify?

Agent Swift - Direct

1 A. Three others.

2 Q. And more specifically have you ever been recognized
3 as an expert in classifying silencers?

4 A. Yes, I have.

5 Q. Where did that take place?

6 A. Northern District of Georgia.

7 Q. Have you ever been disqualified or not allowed to
8 testify?

9 A. No, sir, I have not.

10 Q. So let's talk a little bit more about silencers.
11 Tell us exactly what a silencer is.

12 A. Well, it is a device, which you attach to the end
13 of a firearm barrel, which is designed to reduce the
14 sound or perceived sound that you hear once a shot is
15 fired.

16 Q. Are silencers legal to own?

17 A. Yes, they are.

18 Q. How does somebody legally possess a silencer?

19 A. There are a couple of ways: You can either go to a
20 firearms gun shop, fill out an ATF Form 4, pay the \$200
21 transfer tax, wait for that form to be processed with a
22 background check. Once that background check comes back
23 and that form is approved, you can then take possession
24 of that firearm silencer.

25 Second way is, an individual can make one.

Agent Swift - Direct

1 Same process, different form, you will have to fill out
2 an ATF Form 1, pay the \$200 making tax, submit the form,
3 wait for that to come back with the approved form,
4 includes a background check. Then you can make your
5 firearm silencer.

6 Q. Did you bring examples of commercially available
7 silencers with you today?

8 A. I did.

9 Q. And would they be helpful in explaining your
10 testimony today?

11 A. Yes.

12 MR. TOEPFER: Your Honor, may I ask Officer
13 Swift to step down?

14 THE COURT: Yes.

15 BY MR. TOEPFER:

16 Q. Officer Swift, I will start by showing you
17 Government's Exhibit 33. Can you tell us what that
18 is?

19 A. This was an AAC, Advanced Armament Corporation,
20 firearm silencer that has been disassembled by ATF.

21 Q. I notice there are two parts there. Can you take
22 that apart, and tell us what we are looking at.

23 A. In my left hand is the outer tube, which is designed
24 to cover over the monolithic baffling.

25 Q. And then, also, I will show you Government's Exhibit

Agent Swift - Direct

1 34 and ask you if you can tell us what we are looking at
2 here.

3 A. This is a Gentech firearm silencer commercially
4 made. This is an outer tube, a firearm silencer, a part,
5 silencer under federal law, and this is a monolithic
6 baffle, a part of the silencer. The silencer is
7 regulated under federal law.

8 Q. I notice we are looking at Exhibit 34, the tube
9 screwed on, and Exhibit 33 looks like it slides on and
10 off.

11 Does every silencer have to have a tube that
12 screws on to it?

13 A. No.

14 Q. Do the tubes have to be welded?

15 A. No.

16 Q. What are the different ways that tubes are attached
17 to these monolithic baffles?

18 A. You can press fit an outer tube over the monolithic
19 baffle. You could simply slide a tube or material such
20 as PVC, plumbing parts, a conduit, metal pipe.

21 Q. Things you can find at Home Depot or any sort of
22 parts store?

23 A. Yes, that's correct.

24 Q. Office Swift, I want to talk about Exhibit 33 a
25 little bit more.

Agent Swift - Direct

1 Using it as an example, can you tell us how
2 a silencer works.

3 A. Okay. Well, this would be attached to the muzzle
4 firearm, this portion right here called the rear end cap
5 or rear portion of the firearm silencer. Once a shot is
6 fired the expanding propellant gases, which are a result
7 of a gun shot, come out the muzzle of the barrel and are
8 slowed down by these metal fins or obstructions, and as
9 they are slowed down, they are cooled which reduces the
10 perceived sound of a gun shot.

11 Q. Does a silencer actually make a gun completely
12 silent?

13 A. No.

14 Q. What does it?

15 A. More technically correct is muffles or suppresses
16 the sound.

17 Q. Can silencers act as something called a muzzle
18 brake?

19 A. They can. An incidental function of a firearm
20 silencer, as the gas comes out the barrel, it is slowed
21 down and dispersed. So within about the first three
22 inches or so, it is going to cool rapidly and, thus,
23 reducing the felt recoil of the firearm, the kick you
24 feel when you shoot a rifle.

25 Q. Along those lines, did you bring any examples of

Agent Swift - Direct

1 commercially available muzzle brakes to reduce recoil on
2 a gun?

3 A. Yes.

4 Q. I will show you Exhibits 35 and 36. Let's start
5 with 35. Tell us what you are looking at there.

6 A. This is a muzzle brake. This one is designed to be
7 attached to the muzzle just by clamping on the barrel, no
8 welding, no threading, no skill involved. You see the
9 three fins right here or two fins on each side, same
10 process.

11 When the gun is fired, the hot expanding
12 gases and part of the pressure wave on that cartridge
13 being fired are immediately dispersed in front of the
14 barrel, generally within the first three inches.

15 Q. Tell us about 36.

16 A. Thirty six is a flash hider. A flash hider is
17 attached, same principle, to the end of the barrel and so
18 designed with holes generally all the way around it to a
19 flash or the flash signature to be dispersed so the enemy
20 doesn't see where you are shooting from.

21 Q. Now, as we talk about these muzzle brakes, I notice
22 that 35, which is a muzzle brake, is significantly
23 shorter than the monolithic baffling from Exhibit No. 33.
24 Fair statement?

25 A. Yes.

Agent Swift - Direct

1 Q. Why are muzzle brakes so much shorter than a
2 monolithic baffling?

3 A. On a muzzle brake, you want that energy to be
4 dispersed as fast as you can to reproduce that felt
5 recoil of the firearm. Generally, that's within the
6 first three inches.

7 ATF specifically has conducted testing on
8 muzzle brakes and found within the first three inches
9 that's when most of the pressure wave and hot expanding
10 gases are dispersed.

11 Q. So if you make something beyond that 3 or 4 inch
12 level, is it functioning at that point as an effective
13 muzzle brake?

14 A. No, sir, it is not.

15 Q. If it you had a big monolithic baffle like this
16 end of a gun would that serve as an effective muzzle
17 brake?

18 A. No, sir, it would not.

19 Q. Why not?

20 A. Again, as the gas is coming out, about the first
21 three inches, all the gas has escaped. They are not out
22 here any more with any amount.

23 Q. Now, you mentioned that sometimes silencers can have
24 a secondary function of reducing recoil. What's the only
25 way to turn a tall long monolithic baffle like this into

Agent Swift - Direct

1 something that could effectively reduce the recoil of a
2 gun?

3 A. In the case of an outer tube of some sort to trap,
4 slow those hot expanding gases.

5 Q. Now, Officer Swift did you have a chance to examine
6 any evidence in this case?

7 A. Yes, I did.

8 Q. Generally speaking, what did you look at?

9 A. Monolithic baffling, 194 of them.

10 Q. Would you come with me, please? I am going to show
11 you what previously has been marked for identification as
12 Government's Exhibits 1 through and including
13 Government's Exhibit 15.

14 Did you have a chance to look at these items
15 prior to coming into Court today?

16 A. Yes, I did.

17 Q. Are these the items you examined as part of your
18 investigation in this case?

19 A. Yes, I did.

20 Q. Why don't you have a seat, and we will go ahead and
21 talk further about this?

22 MR. TOEPFER: Your Honor, may I have the
23 Elmo?

24 THE COURT: You may.

25

Agent Swift - Direct

1 BY MR. TOEPFER

2 Q. Officer Swift, I would like to show you Government's
3 Exhibits 1, 2, and 3.

4 Again, these are items that you examined as
5 part of your preparation for this case.

6 A. Yes, sir.

7 Q. What are we looking at here?

8 A. Looking at three monolithic silencer baffles.

9 Q. What did you do with these when they first came into
10 your possession?

11 A. I noted the physical dimensions of the items, and
12 then I made a comparison of these items to other
13 monolithic baffles and from the National Firearms
14 Collection.

15 Q. In the process of doing that, did you form any
16 opinions about what these items are?

17 A. Yes, I did.

18 Q. And that was based upon what?

19 A. A comparison of those items to known monolithic
20 baffles, silencers or baffles.

21 Q. And what was your opinion?

22 MR. BETRAS: Objection, your Honor.

23 THE COURT: Overruled.

24 A. These are firearm silencer monolithic baffles.

25 Q. Now, would these items alone by themselves muffle

Agent Swift - Direct

1 any sound if they were attached to the end of a gun?

2 A. No.

3 Q. Why not?

4 A. This is an internal part of a firearm silencer. If
5 these items are designed to be encased by some outer body
6 or tube.

7 Q. What would it take to make these functioning
8 devices?

9 A. Some sort of outer tube such as PVC or cylindrical
10 pipe, some type of material slid over them.

11 MR. BETRAS: Objection, your Honor.

12 THE COURT: Overruled.

13 BY MR. TOEPFER:

14 Q. Based on your experience working in the machine shop
15 and training at ATF, how would you attach a tube to any
16 one of these items?

17 A. Well, you could have one press fit, you could have
18 one just slid over it and clamped with hose clamps, or
19 you could use some JB weld or caulking or some other
20 adhesive.

21 Q. Okay. Now, I would like to show you Government's
22 Exhibit No. 4, which is on the far right of your screen
23 right now. Can you tell us what that is?

24 A. That's a flash hider.

25 Q. Was this something you considered to be a monolithic

Agent Swift - Direct

1 baffle?

2 A. No.

3 Q. Is Exhibit No. 4 a silencer part?

4 A. No.

5 Q. What makes Exhibit No. 4 different from the first
6 three we looked at that made you decide that's not a
7 silencer part?

8 A. The machining of the holes in Exhibit 4 don't allow
9 the exhibit to be even encased in an outer body or tube
10 to incorporate areas of expansion of the hot expanding
11 gases. This device is designed to allow immediate
12 release in front of the muzzle of all the hot expanding
13 gases once a shot is fired.

14 Q. You talked earlier about these — we will call them
15 fins — that go up and down, for example, 1, 2 and 3.

16 Was the absence of fins on Exhibit No. 4
17 here, was that significant to you?

18 A. It is significant, but it doesn't make the
19 classification.

20 Q. And again, what's the purpose of the gaps between
21 the fins there?

22 A. Those are to create areas of expansion to slowly
23 cool and trap hot expanding gases once a shot is fired
24 from a firearm.

25 Q. Officer Swift, did you put together a series

Agent Swift - Direct

1 of photographs that detailed the other items we
2 have discussed so far today as you were inspecting
3 them?

4 A. I did.

5 Q. Would referring to those slides be helpful in
6 explaining your testimony?

7 A. It would.

8 Q. I would like to show you what has been marked, then,
9 as Government's Exhibit No. 30. If we could have the
10 computer, please. In this first slide, can you tell us
11 what we are looking at here?

12 A. You are looking at an AAC, Advanced Armament
13 Corporation, model Titan firearm silencer.

14 Q. And this is a commercially available silencer?

15 A. Yes.

16 Q. What do we see on page 2?

17 A. Same item, just disassembled.

18 Q. If you look at page 3, what does this show us?

19 A. This is the rear of the monolithic baffle where it
20 would be attached to a firearm.

21 Q. And where exactly would it get attached on there?

22 A. At the rear portion right here. (Indicating.)

23 Q. Is that where it would screw on to the end of the
24 barrel?

25 A. No. This one is usually quick to attach, which is

Agent Swift - Direct

1 generally incorporated into a flash hider.

2 Q. And what is page 4 showing us there?

3 A. This is the end of the front end cap where the
4 projectile comes out.

5 Q. Page 5, what does this show?

6 A. This is a Gemtech model GM 22 firearm silencer.

7 Q. Again, it is another commercially available
8 silencer?

9 A. Yes.

10 Q. Page 6, what does this show?

11 A. Same silencer, just disassembled.

12 Q. I noticed the monolithic baffle here looks different
13 from the first one. Is that common how silencers are
14 designed and built?

15 A. Yes. There is no one standard for the design of a
16 monolithic baffle, depending on the size and shape or the
17 size and caliber in a commercially available one to be
18 shot, say a .22, which is a .30 caliber or a larger
19 caliber, you would want to slow the gas. As long as it
20 slows and cools the hot expanding gases, it is going to
21 do the job. Some might do well, better than others.

22 Q. Page 7, what's this showing us?

23 A. The rear portion where it is internally threaded to
24 allow attachment to a portable firearm.

25 Q. And then page 8?

Agent Swift - Direct

1 A. This is the front. This is where the bullet comes
2 out.

3 Q. So now I would like to move on specifically to some
4 of the exhibits that you looked at related to this case.
5 We will start here, and when stuff comes through ATF, is
6 there a different number assigned to it?

7 A. Yes.

8 Q. Okay. So this will be your ATF Exhibit 69, but it
9 is actually Government's Exhibit No. 5. Can you tell us
10 what this is?

11 A. This is a bag of monolithic firearm silencers,
12 baffles.

13 Q. And if we go to page 10.

14 A. This is 42 of them. This is taken out of the
15 bag.

16 Q. Page 11?

17 A. This is an example showing the rear of each one of
18 them, which is internally threaded so it can be attached
19 to a portable firearm.

20 Q. And page 12?

21 A. This is an example photograph of the front, which
22 has a hole machine to allow a projectile to exit.

23 Q. And what would it take to turn any one of those
24 items into a functioning silencer device?

25 A. It wouldn't take much. It would take some sort of

Agent Swift - Direct

1 outer tube as I described before placed over or encasing
2 the monolithic baffle.

3 Q. Let's move on to Government's Exhibit 13, your
4 Exhibit 70, and can you tell us what this is?

5 A. This is another bag of monolithic silencer baffle.

6 Q. And page 14, what does this show?

7 A. The same items, just displayed outside the bag.

8 Q. Page 15?

9 A. An example photograph showing the rear of these
10 devices, which is internally threaded and designed to be
11 attached to a firearm.

12 Q. Page 16?

13 A. Example photograph of the front, front end cap,
14 which has a hole machined into it to allow a projectile.

15 Q. Okay. This will be page 17. This was your
16 Exhibit 71, but Government's Exhibit No. 7, what is this
17 showing?

18 A. This is another bag of monolithic silencer baffles.

19 Q. Page 18?

20 A. This is an overall view of the same items outside of
21 the bag.

22 Q. Page 19?

23 A. This is an overall view of the rear portion, which
24 were each internally threaded to allow it to be attached
25 to a portable firearm.

Agent Swift - Direct

1 Q. Page 20?

2 A. This is a front view of the same items with the
3 holed machine in the front to allow exit of the bullet or
4 projectile.

5 Q. Let's move on to page 21. This is referring to your
6 ATF Exhibit 72 but would have been Government's Exhibit
7 No. 8. What is this?

8 A. This is another bag of monolithic silencer baffles.

9 Q. Page 22?

10 A. Same items displayed outside of the bag.

11 Q. Page 23?

12 A. A rearview of the internally threaded portion, which
13 allows that item to be attached to a firearm.

14 Q. And page 24?

15 A. The front view or view of the front portion of the
16 machine to allow a projectile to exit.

17 Q. Page 25 refers to your Exhibit 73, and this
18 would have been Government's Exhibit No. 9. What is
19 this?

20 A. Another bag of monolithic silencer baffles.

21 Q. Page 26?

22 A. Same items, just outside of the bag.

23 Q. Page 27?

24 A. Example photograph showing the internally threaded
25 rear portion of these devices, which allows it to be

Agent Swift - Direct

1 attached to a portable firearm.

2 Q. Page 28?

3 A. Example photograph showing the holed machine through
4 the front portion to allow a projectile to escape.

5 Q. Page 29, we are referring to your Exhibit 74, but
6 this would have been Government's Exhibit No. 10, what is
7 this?

8 A. This is another bag of monolithic silencer baffles.

9 Q. Page 30?

10 A. Same baffles, just laid out outside of the bag.

11 Q. Page 31?

12 A. Same items depicting the internal threading at the
13 rear to allowed them to be attached to a portable
14 firearm.

15 Q. Page 32?

16 A. Photograph depicting the front portion, which has a
17 hole machined to allow the projectile or bullet to come
18 out of the flash.

19 Q. There has been some issue in this case about whether
20 these are monolithic baffles that are silencer parts or
21 simply something called a muzzle brake.

22 Based on your experience and knowledge, are
23 any of the items we looked at so far with the exception
24 of Government's Exhibit 4, are any of those items muzzle
25 brakes?

Agent Swift - Direct

1 A. No.

2 Q. What are they?

3 A. They are monolithic baffles for use in the silencer.

4 Q. Why are you saying they are not muzzle brakes?

5 A. Because each one of these 194 items is an internal
6 component of a firearm silencer, thus, a part of a
7 silencer, thus, a firearm silencer.

8 Q. Let's move on to page 33. This is your Exhibit 75,
9 Government's Exhibit 11. What does that show?

10 A. A bag of several items.

11 Q. And if you look at page 34, what does this show?

12 A. It shows 1, 2, 3, 4, 5, 6, 7 end caps, silencer end
13 caps.

14 Q. Are those the items along the top there?

15 A. Yes, sir.

16 Q. What's an end cap?

17 A. An end cap is something that would be at the front
18 or rear portion of the firearm silencer. At the rear, it
19 is generally internally threaded or some type of
20 attachment point either it is quick detachable, a clamp.
21 It is generally referred to as an rear end cap or rear
22 portion. Front end cap would be same type, same size
23 generally, which would have a hole in the machine for the
24 projectile to enter the device.

25 Q. Page 35, what does this show?

Agent Swift - Direct

1 A. Shows the seven end caps, and it shows five
2 monolithic baffles and a flash hider.

3 Q. Which one are you saying is the flash hider?

4 A. I have it identified as 75 M.

5 MR. TOEPFER: Your Honor, may I approach?

6 THE COURT: Sure.

7 BY MR. TOEPFER

8 Q. Officer Swift, I just handed you what has been
9 marked for identification as Government's Exhibit 11 A.
10 Can you tell us what that is?

11 A. This is a flash hider.

12 Q. Did you determine that that is a silencer part?

13 A. No, no.

14 Q. Why is it not?

15 A. It is not designed as an internal component of a
16 firearm silencer. It is not designed to create any kind
17 of expansion chamber if anything were placed around the
18 item.

19 Q. What are some of the distinguishing characteristics
20 between 11 A and the other items that we see pictured on
21 the screen here?

22 A. The overall length of this item is substantially
23 shorter than the other items I evaluated.

24 Q. Why is that significant to you?

25 A. Generally, within the first three inches in front of

Agent Swift - Direct

1 the muzzle, on a muzzle brake, the gas is redirected,
2 passed about three inches, an item is not as effective as
3 a muzzle brake. So the extra length is generally not
4 necessary in the design of a muzzle brake.

5 Q. If we keep looking at your slides here, page 36,
6 what does that show?

7 A. The same items, just having the front showing the
8 machine hole for the projectile to escape.

9 Q. Let's now look at page 37. This was your Exhibit 77
10 but Government's Exhibit 12. What does this show?

11 A. Shows a bag containing a monolithic baffle and
12 another item which is threaded.

13 Q. Look at page 38. Are these the items outside the
14 bag?

15 A. Yes, sir, they are.

16 Q. What do we see here?

17 A. Well, the item on the left is not a firearm silencer
18 and not an item regulated under federal law. I found an
19 external threading of that item as compatible with the
20 internal threading of the 194 monolithic baffles.

21 Q. Officer Swift, I have handed you Exhibits 12 and

22 12 A. Tell us what you have there?

23 A. I have one monolithic silencer baffle, which is
24 internally threaded at the rear, and you have essentially
25 a thread checker in my opinion is to check the machining

Agent Swift - Direct

1 of the threads at the rear portion of each one of these
2 194 devices.

3 Q. Is it sort of a device to verify if the threading is
4 proper?

5 A. Yes. You can do that by simply screwing it on.
6 This thread pitch is half 28, which is a common thread
7 pitch found on an AR 15 thread type rifle and other type
8 of rifles.

9 Q. Let's move to page 40 of your presentation here
10 showing your Exhibit No. 78, Government's Exhibit No. 13,
11 and then page 41, what does this show?

12 A. A monolithic silencer baffle, the rear portion of it
13 highlighting the internal threads at the rear so it can
14 be attached to a portable firearm.

15 Q. Page 42?

16 A. Same item picking the front portion with the machine
17 hole, which allows the bullet or projectile to exit.

18 Q. Page 43 refers to your Exhibit 79 but this would be
19 Government's Exhibit 14. What does this show?

20 A. This shows a monolithic silencer baffle.

21 Q. Page 44?

22 A. The rear internally threaded portion of the item.

23 Q. And then page 45?

24 A. The front portion of the item with a machine hole to
25 allow the projectile to escape.

Agent Swift - Direct

1 Q. Now, it appears that this one had not been
2 completely machined yet. Is that a fair statement?

3 A. That's correct.

4 Q. So why are you classifying this as a silencer part
5 if it is not completely machined yet?

6 A. Based on the design features of the other numerous
7 monolithic baffles I evaluated, I determined that was a
8 part for and used in the assembly of a firearm silencer.
9 Thus, it is a silencer.

10 Q. Page 46 shows your Exhibit 80, but this is
11 Government's Exhibit 15. What does that show?

12 A. It is a monolithic silencer baffle.

13 Q. Page 47?

14 A. An internally threaded portion.

15 Q. And page 48?

16 A. The front portion, the machine holed to allow the
17 projectile to exit.

18 Q. And again, based on your training, experience, your
19 knowledge in this area, are any of those last items that
20 we talked about, would you consider any of those muzzle
21 brakes?

22 A. No, sir, I would not.

23 Q. Why not?

24 A. Because these are all internal components of
25 a firearm silencer, monolithic firearm silencer

Agent Swift - Cross

1 baffles.

2 MR. TOEPFER: May I have a moment, your
3 Honor.

4 THE COURT: You may.

5 (Pause.)

6 MR. TOEPFER: Thank you. Nothing further.

7 THE COURT: You may cross-examine.

8 MR. BETRAS: Thank you. Just give me a
9 moment, your Honor.

10 THE COURT: Sure.

11 CROSS EXAMINATION

12 BY MR. BETRAS:

13 Q. So if I understand your testimony correctly, size
14 does matter with you then, correct?

15 A. Sir?

16 Q. I said size matters with you, right?

17 A. Are you referring to the muzzle devices?

18 Q. Yes, sir.

19 A. Okay.

20 Q. Size matters, right?

21 A. Yes, sir.

22 Q. So if it is over 3 inches, in your opinion, or is it
23 4 inches, it is not a muzzle brake; it is a silencer
24 part. If it is under 4 inches, it is some other part.

25 Is that correct?

Agent Swift - Cross

1 A. I didn't say four inches. I said three inches.

2 Q. Okay. I will take your word for it.

3 Over three inches, it is part of a silencer;
4 under 3 inches, it is a muzzle brake. That's your
5 testimony.

6 A. Devices usually over three inches are ineffective as
7 a muzzle brake.

8 Q. Say that again, officer.

9 A. I said devices generally over three inches are
10 generally ineffective as a muzzle brake.

11 Q. Have you ever heard of a concept called progressive
12 gas leaks?

13 A. No.

14 Q. You never heard of that concept?

15 A. No, sir, I have not.

16 Q. Is there a committee at the ATF that determines
17 whether something is a part of a silencer, or is that
18 just on you?

19 A. There is no committee. That's on each individual
20 firearms enforcement officer.

21 Q. So you have an opinion that these parts that we saw
22 are part of a silencer because of two things: One, their
23 size, correct?

24 A. Yes, sir.

25 Q. And the way they are redirecting the gas, correct?

Agent Swift - Cross

1 A. That's correct.

2 Q. All right. And you wrote a report in this case,
3 correct?

4 A. I did.

5 Q. And your report basically reaches the same
6 conclusion on all these parts where you take a
7 measurement of them, correct?

8 A. That's correct.

9 Q. And you measure the width of them, correct?

10 A. The diameter, yes, sir.

11 Q. I'm sorry. The diameter. Now, I want to show
12 you Government's Exhibit 1, and so the jury understands,
13 if this was 3 inches long, your testimony would be
14 completely different than how long it is now, correct?

15 A. Can you repeat the question?

16 Q. If this were 3 inches long, you would not have the
17 opinion that it is a silencer, correct?

18 A. Well, I haven't examined that item in a hypothetical
19 state as you are stating.

20 Q. Well, let me ask you a hypothetical question.
21 Hypothetically speaking, of all these parts that you say
22 are silencer parts, if they were 3 inches or less, your
23 opinion would be that they are not silencer parts,
24 correct?

25 A. Generally, yes.

Agent Swift - Cross

1 Q. Okay. So you are saying that a tube can be put over
2 this, correct?

3 A. Yes.

4 Q. And so the jury is clear, this thing alone by itself
5 silences no sound, correct?

6 A. That's correct.

7 Q. All right. There has to be something you put over
8 this, correct?

9 A. That's correct.

10 Q. And according to your testimony, it is easy to put
11 something over on this, correct?

12 A. Correct.

13 Q. And if it is so easy to put a part over this, why —
14 strike that — you didn't bother to put a part over it
15 and test fire it, did you?

16 A. No, sir, I didn't.

17 Q. Okay. You said, though, it is easy to do,
18 correct?

19 A. That's correct.

20 Q. And yet, you didn't do that?

21 A. That's correct.

22 Q. Do you know what these are made out of, the type of
23 metal they are?

24 A. There were some that appeared to be an aluminum
25 type.

Agent Swift - Cross

1 Q. Any significance between aluminum and reinforced
2 steel?

3 A. And there were some items that appeared to be of a
4 ferrous type metal.

5 Q. Any significance of it being aluminum as opposed to
6 reinforced steel or titanium?

7 A. With regard to my classification, no.

8 Q. You could put a potato over that, right?

9 A. I'm sorry?

10 Q. I could put a pillow over this and muffle the sound,
11 correct?

12 A. Yes.

13 Q. I could get one of those big potatoes they have at
14 these big steak houses here and drill a hole in the
15 potato, I could stick this in the potato, right?

16 A. You could.

17 Q. And that would muffle the sound, right?

18 A. Possibly, yes.

19 Q. But your thing is that a tube like this goes over
20 it, correct?

21 A. Yes.

22 Q. All right. And I noticed you had this one, too,
23 correct? Can I approach the witness, your Honor?

24 THE COURT: Sure.

25

Agent Swift - Cross

1 BY MR. BETRAS:

2 Q. I want you to look at — I want you to look at
3 Exhibit 34 and Exhibit 33 for me. Would you take a
4 look at those? You clearly said those are silencers,
5 right?

6 A. Yes.

7 Q. And each one of those has a lip on them, do they
8 not?

9 A. Lip. What do you mean by lip?

10 Q. This little thing here where it screws on.

11 A. The raised area?

12 Q. Shoulder. Is that what it is? That one has a
13 shoulder, right?

14 A. Yes.

15 Q. And this one has a shoulder, correct?

16 A. Yes.

17 Q. But the Government's Exhibit whatever and all the
18 ones you examined, none of those have a shoulder, do
19 they?

20 A. No, sir, they don't.

21 Q. Not one of them, correct?

22 A. That's correct.

23 Q. And you would agree with me that you can't
24 accidentally make a silencer. You have to intend to make
25 a silencer, right, or is it your testimony you can

Agent Swift - Cross

1 accidentally do this and violate the law? You have to
2 intend to violate the law, right?

3 A. No. You can make an item.

4 Q. My question is, so your testimony to the jury is,
5 you can accidentally make a silencer?

6 A. I am not saying you can make — accidentally make a
7 silencer. You can make an item that may incorporate
8 firearm silencer characteristics.

9 Q. Okay. All right. I will go with that. So
10 something has to go over this, correct?

11 A. Yes.

12 Q. Now, when I asked you, is there a committee, you
13 said there is no committee, correct? It is just you and
14 some other guys there?

15 A. That's correct.

16 Q. And is there any peer review article that you review
17 to determine whether or not these would be considered
18 silencers as opposed to not silencers?

19 A. We reviewed the outcome and summary judgment of
20 SIG versus Beta Jones and the appeal of SIG Sauer —

21 Q. I'm so glad you mentioned that case.

22 Isn't it a fact, officer, that in that case,
23 in that SIG Sauer case, that they had a lip or a shoulder
24 on that part, correct?

25 A. I would have to review the item to know that.

Agent Swift - Cross

1 Q. You were talking about how knowledgeable you were
2 with the SIG Sauer case, and now you are saying you are
3 not that knowledgeable of it?

4 A. I didn't say that.

5 Q. All right. So once again, I am going to ask you,
6 isn't it a fact that in the SIG Sauer case there was a
7 lip or a shoulder on that silencer part that you are
8 relying on?

9 A. I would have to review that item to determine
10 that.

11 Q. Well, did you review that item before you made your
12 opinion that these are silencers?

13 A. Yes, I did.

14 Q. You reviewed that case?

15 A. Yes.

16 Q. Well, if you reviewed the case, then you should know
17 whether or not that firearm in that SIG Sauer case that
18 you are relying on had a lip or a shoulder on it?

19 A. I don't understand your question, sir.

20 Q. Okay. Let's go back.

21 I was asking you the significance of there
22 being no shoulder or lip —

23 A. Okay.

24 Q. — on this muzzle brake as compared to this
25 Government's Exhibit 33 and Government's Exhibit 34.

Agent Swift - Cross

1 A. Okay.

2 Q. Which both have either a screw on or some kind of a
3 lip that the tubing goes on?

4 A. Okay.

5 Q. Do you understand?

6 A. Yes, sir.

7 Q. And so my question to you is, you were saying that
8 the SIG Sauer case is sort of your guide as to whether
9 something is a silencer part or whether it is something
10 else, correct?

11 A. Right.

12 Q. And I am asking you, the firearm that was used in
13 the SIG Sauer case, isn't it a fact that that firearm
14 contained this either lip or that screw on, that case and
15 the firearm in this case had that lip as opposed to here
16 where there is no lip, correct?

17 A. Correct.

18 Q. All right. So the case you are relying on saying
19 that this is violating federal law had a lip or a
20 shoulder, and the item that was seized from my client had
21 no shoulder, correct?

22 A. That's correct.

23 Q. All right. And so your testimony is that you could
24 put a tube over this, and it would muffle the sound,
25 correct?

Agent Swift - Cross

1 A. That's correct.

2 Q. And you could take a potato and put it over this and
3 muffle the sound, correct?

4 A. That's correct.

5 Q. So you could take a pillow on the end of a gun and
6 make a silencer, correct?

7 A. Yes, sir, that's correct.

8 Q. All right. So in order for this, you would have to
9 affix the tubing over the monolithic baffler for that to
10 be an operating silencer, correct?

11 A. Correct.

12 Q. Now, there is no threading on this part that goes
13 into the gun, correct?

14 A. That's correct.

15 Q. So the only way you could attach — let me ask you
16 this: Is it significant to you that these are machined
17 imprecisely?

18 A. What do you mean "imprecisely," sir?

19 Q. Are these precisely machined, the diameter? Are
20 they precisely machined?

21 A. To what diameter?

22 Q. Well, I am asking you. Are they precisely machined?
23 Do you know they are precisely machined, or you don't
24 know they are precisely machined?

25 A. Well, what is your definition of "precisely"?

Agent Swift - Cross

1 Q. Well, did you examine all of these parts here? You
2 examined all of those, correct?

3 A. That's correct.

4 Q. Okay.

5 A. Are you saying they are completely machined and
6 finished? Is that what you are asking me?

7 Q. That's my question. Are they finally machined so a
8 tube can go over it?

9 A. Yes.

10 Q. That's your opinion?

11 A. Yes.

12 Q. Okay. You put no meter on these, correct, no — you
13 have a meter that measures microscopically or to the
14 minutest degree the diameter?

15 A. No, sir. I used a dial caliper.

16 Q. And did you use a dial caliper on all of them?

17 A. Yes.

18 Q. And did you use the dial caliper up and down the
19 shaft, or did you just pick a spot?

20 A. No. I made two measurements, at the front and the
21 rear.

22 Q. Okay. So if it is imprecisely machined putting a
23 tube on it, it could blow the tube off, no?

24 A. No.

25 Q. Your opinion is that if you put a tube over this and

Agent Swift - Cross

1 didn't fasten it in some way, that that tube is not going
2 to blow off?

3 A. Well, there are different ways of attaching a tube
4 to it. As I said earlier, a press fitment, which would
5 be a tube, a little smaller diameter than that device
6 there, and so it would be secured by tension or press
7 fitment.

8 Q. Hence, my question of the precise machine:

9 In order for it to be a snug fit, they would
10 need to be machined together in order to have the fit
11 that would properly muffle the sound, correct?

12 A. No, because a firearm silencer doesn't actually have
13 to work or work well to be classified as a firearm
14 silencer.

15 Q. It doesn't have to work or work well to be a firearm
16 silencer, correct?

17 A. That's correct.

18 Q. All right. One second.

19 You said you could press fit the tube on
20 this.

21 A. Yes.

22 Q. Would that press fit ruin the flanges?

23 A. No.

24 Q. It would not?

25 A. No.

Agent Swift - Cross

1 Q. Did anyone show you the experiment that Steve Howard
2 ran on these?

3 A. I witnessed his testing of that, yes.

4 Q. Okay. And when you witnessed his testing, you saw
5 that the recoil from the firearm was greatly reduced once
6 these were attached, correct?

7 A. I believe without that device on it, it was 21
8 inches, and with that device was 11 inches.

9 Q. So it reduced the recoil?

10 A. Yes.

11 Q. Okay. And you would agree with me that by shear
12 definition a muzzle brake design is to reduce the recoil?

13 A. A muzzle brake is designed to reduce the recoil,
14 yes.

15 Q. Okay. And these reduced the recoil, did they
16 not?

17 A. Yes, they did.

18 Q. Okay. Do you have any training in welding?

19 A. No, sir, I don't.

20 Q. Are you able to testify to any degree of certainty
21 about — or would you be able to weld aluminum on to
22 aluminum?

23 A. No, sir, I don't.

24 Q. Okay. And if you press fit it, you have an opinion,
25 do you not, that if those — that gun could explode, can

Agent Swift - Cross

1 it not, if it is not properly fit?

2 A. Are you talking the gun can explode?

3 Q. The projectile coming out of the gun.

4 A. No. Not with a press fitment, no.

5 Q. It wouldn't explode?

6 A. No, sir.

7 Q. It would just come out?

8 A. Yes, sir.

9 Q. And how would you press fit it?

10 A. Well, you take something like PVC, plastic type
11 material would slide right over that. Aluminum versus
12 plastic would not damage those fins.

13 Q. What's going to prevent the tubing from flying off
14 if it is not attached to the muzzle brake?

15 A. Well, you can attach it in several different ways.
16 You can use tape. You can use JB weld, have epoxy,
17 adhesive, caulking, hose clamps, several different
18 ways.

19 Q. When I use the word "psi," what does that mean to
20 you?

21 A. It is a unit of pressure.

22 Q. And when a projectile is coming out of an AR 15, at
23 what psi do you know it comes out the end of that?

24 A. I don't know that measurement, sir.

25 Q. You do not know that?

Agent Swift - Cross

1 A. No.

2 Q. Because if you knew that, if I told you it is 65,000
3 psi per square inch of force, you don't think tape is
4 going to hold that covering on, do you?

5 A. I don't know if it would or not.

6 Q. You can't testify to that.

7 A. No, sir.

8 Q. And how many cases have you testified in regarding
9 silencers in federal court?

10 A. One.

11 Q. One?

12 A. Yes, sir.

13 Q. Oh. So you have done this one other time before?

14 A. That's correct.

15 Q. Correct. So you are sitting at your office — is it
16 in Virginia?

17 A. West Virginia.

18 Q. West Virginia. They like guns in West Virginia,
19 right? You are sitting in your office in West Virginia
20 and in comes this. You take out your little measurement
21 thing, you measure them, right?

22 A. Yes, sir.

23 Q. You measure their length and their diameter.

24 And you come to the opinion, uh huh, this looks

25 like, it resembles other silencers that I have seen,

Agent Swift - Cross

1 correct?

2 A. That's correct.

3 Q. And as a matter of fact, in your report, you say it
4 appears similar to other firearm silencer parts I have
5 observed, correct?

6 A. That's correct.

7 Q. And your testimony is you could take a tube and put
8 it on there and even though that's easy to do, you never
9 did that?

10 A. That's correct.

11 Q. You wouldn't know if that would work or not work?

12 A. It would work.

13 Q. It would work?

14 A. Yes, sir.

15 Q. Easily work?

16 A. Yes, sir.

17 Q. So easily that you took time to do it, right?

18 A. I did not do that.

19 Q. When you worked at the machine shop, did you
20 actually do machining, or were you just managing
21 it?

22 A. I was a tool crib manager. No, I did no manual
23 machining or CNC machining, no, sir.

24 Q. I didn't hear what you said.

25 A. I did not do any machining while I was there, no,

Agent Swift - Cross

1 sir.

2 Q. You did no machining.

3 And I noticed on the one, I want to go to —

4 MR. BETRAS: Can you turn on the Elmo, your

5 Honor?

6 THE COURT: Sure.

7 MR. BETRAS: Thank you very much, your

8 Honor.

9 BY MR. BETRAS:

10 Q. — I noticed in your direct examination that you

11 even said this one was a silencer, correct?

12 A. That's correct.

13 Q. It is not even finished, is it?

14 A. That's right.

15 Q. And it is warped, isn't it?

16 A. No, it is not warped.

17 Q. It is twisted?

18 A. That's the way it was machined, sir.

19 Q. An unfinished part that was machined twisted in your

20 opinion is a silencer part, even though that's even

21 functioning. That's your opinion to this jury?

22 A. Whether a part is finished or not, this device, this

23 part incorporates the design features of the other 193

24 that I classified as firearms silencers.

25 Q. And I am going to show you another picture that you

Agent Swift - Cross

1 classified, you see these items right up here?

2 A. Yes, sir.

3 Q. Do you know what those are?

4 A. Those appear to be front end caps of a firearm
5 silencer.

6 Q. How about they are a part for an engine block.
7 Do you know if my client was doing work for engine
8 blocks?

9 A. No.

10 Q. You wouldn't know that because you are not a
11 machinist?

12 A. I didn't know his occupation.

13 Q. You didn't know he was a machinist?

14 A. I don't know. I didn't know he was a mechanic.

15 Q. Do machinists machine parts for automobiles?

16 A. I guess it is possible they could, sir, yes.

17 Q. You would agree with me that if a part is a muzzle
18 brake, that it is not a firearm, correct?

19 A. As long as it doesn't have design features of a
20 firearm silencer. Then no, it would not be.

21 Q. Okay. So hypothetically — and you disagree with
22 me, I get it — but hypothetically, if these were muzzle
23 brakes, even though you don't think they are, if they
24 were three inches instead of how big they are, in your
25 opinion, they would be muzzle brakes and not a firearm or

Agent Swift - Cross

1 a firearm part?

2 A. Generally, at that length, they would not
3 incorporate firearm silencer features.

4 Q. Now, in your report — so I want to make sure I
5 understand this.

6 Is it your testimony that over three inches
7 the gas, it doesn't matter about the expanding gas to act
8 as a muzzle brake?

9 A. Well, the device wouldn't be effective past that
10 because in the first three inches most of the gas has
11 already been redirected in front of the muzzle.

12 Q. Most of the gas but not all of it?

13 A. That's correct.

14 Q. So there is still some gas coming out even at the
15 length of these parts, correct?

16 A. That's correct.

17 Q. And even gas coming out will cause a recoil,
18 correct. Gas coming out of that firearm is going to
19 cause a recoil?

20 A. Generally, yes.

21 Q. So the longer you can make the gas to be recoiled,
22 the less of a recoil — strike that. I am confusing
23 myself.

24 The longer you can expand the gas coming out
25 of the firearm, the less of a recoil you are going to get

Agent Swift - Cross

1 from that firearm, correct?

2 A. If it is past three inches, it is going to be
3 greatly diminished.

4 Q. It is going to be diminished, but there is
5 still some gas coming out that will cause a recoil,
6 correct?

7 A. Cause it to reduce recoil or recoil?

8 Q. Both.

9 A. I am not sure I understand that question. Can you
10 repeat that?

11 Q. All right. You said that past three inches, it
12 is minimal, the gas and the recoil is minimized greatly
13 in the first three inches. You testified to that,
14 correct?

15 A. Yes.

16 Q. All right. But your testimony is also, is it not,
17 that even past three inches there is still gas coming
18 out, correct?

19 A. Yes.

20 Q. And if you could design something to even
21 incorporate that gas, that would cause a reduction in the
22 recoil even further, would it not?

23 A. Possibly. That's generally a feature found in
24 firearms silencers.

25 Q. Okay. Now, in exhibit — I forget which, it is your

Agent Swift - Cross

1 Exhibit 79, right?

2 A. That's correct.

3 Q. Nothing has been done to that. It is just a
4 piece of tube, right? It hasn't been machined at all,
5 right?

6 A. I believe that's been machined on the other side of
7 it. Has that not been machined?

8 Q. Well, it just looks like a solid tube to me, solid
9 piece of metal.

10 A. Do you have that exhibit here I could take a look
11 at?

12 Q. Sure.

13 MR. BETRAS: May I approach, your Honor?

14 THE COURT: You may.

15 MR. BETRAS: You have a book up there. Can
16 I find it?

17 THE COURT: I think he wants the actual
18 item.

19 BY MR. BETRAS:

20 Q. Do you have this? This one is not even done, is it?

21 A. It is not completed, no, sir.

22 Q. And even in light of that, you still said, oh, yeah,
23 that's a silencer?

24 A. Yes, sir, I did.

25 Q. Even though it is not done?

Agent Swift - Cross

1 A. That's correct.

2 Q. I wanted to thank you for your service by the way in
3 the Army.

4 A. Thank you.

5 MR. BETRAS: Just a couple more questions.

6 (Pause.)

7 BY MR. BETRAS

8 Q. I want you to grab — there is a black binder up
9 there, sir. I want you to go to Defendant's Exhibit E 4.
10 I just want to point out one thing to you that you
11 repeated a lot.

12 A. Okay.

13 Q. And it says there — and follow with me "as a
14 result, Exhibit 67 is a part used only in the assembly or
15 fabrication of a firearm silencer." In other words.
16 That's its only use? That's what you wrote there,
17 correct?

18 A. Yes. Can I look at Exhibit 67?

19 Q. Just so you know, that passage is repeated in every
20 one of your analysis?

21 A. Yes, sir. I just want to verify what I am talking
22 about.

23 Q. I am not trying to mislead you, but you examined
24 each one of these individually, correct?

25 A. Correct.

Agent Swift - Cross

1 Q. And then you wrote a report?

2 A. Yes.

3 Q. And that sentence is on each one of them, so I could
4 show you any one of them, correct? You would agree with
5 me —

6 A. Not that I don't trust you, I just want to see
7 Exhibit 67.

8 Q. Well, let's go to one that we can find. This is
9 Exhibit 3. Can you take a look at Exhibit 3?

10 A. Yes, I did.

11 Q. Okay. And that same sentence used in Exhibit 3 as
12 it is used in Exhibit 67, correct?

13 A. Yes.

14 Q. And that sentence is "only used in the assembly or
15 fabrication of a firearm silencer"?

16 A. Yes, sir.

17 Q. Well, that's not accurate, right, because you at
18 least saw my — I mean our expert do the recoil test, and
19 you saw that it greatly reduced the recoil.

20 A. That's a secondary function of this device.

21 Q. In your opinion.

22 A. Yes, sir, in my opinion.

23 Q. Okay. And I will leave you with this: There is no
24 book that you go to of peer-reviewed articles that
25 determines, that makes the determination that this is a

Agent Swift - Cross

1 silencer or not. This is based on your testimony,
2 correct?

3 A. Based on the definition given federal law and the
4 Gun Control Act what a silencer is.

5 Q. Okay. I will take that.

6 But there is no articles or generally
7 accepted book that you can go to and say, yep, nope. You
8 are making those calls based on your opinion?

9 A. Yes, sir.

10 Q. And your observation.

11 A. Yes, sir.

12 Q. Okay. And basically, because these are over three
13 inches, that's what made you say these are silencer
14 parts, correct?

15 A. That's correct.

16 Q. Regardless of what my client may or may not have
17 intended?

18 A. That's correct.

19 MR. BETRAS: Okay. One second.

20 (Pause.)

21 Q. One last question: When that gun was test fired by
22 Mr. Howard with these devices on the end of it and with
23 the devices not on the end of it, isn't it a fact that
24 the sound was louder with these devices on as opposed to
25 without?

Agent Swift - Redirect

1 A. Oh, yes, it was, because as the operator, when the
2 shot is fired, these metal fins redirect the pressure
3 wings back to the operator or the shooter.

4 Q. Okay. So the testimony is clear, when you put this
5 on the firearm, it made it louder, not quieter?

6 A. When I observed Mr. Howard test fire it, yes.

7 MR. BETRAS: Okay. No further questions.

8 THE COURT: Anything?

9 MR. TOEPFER: Yes, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. TOEPFER

12 Q. Officer Swift, you were asked about whether you put
13 a tube over one of these items and test fired it. Why
14 didn't you do that?

15 A. Because ATF has determined that items with these
16 physical characteristics, design features is a monolithic
17 silencer baffle.

18 Q. So test firing it or putting a tube on it wouldn't
19 have affected your opinion in any way?

20 A. No, sir.

21 Q. You were asked about the absence of a shoulder or
22 lip on one of these items. Is that significant to you at
23 all?

24 A. No, sir.

25 Q. Why not?

Agent Swift - Redirect

1 A. Because that's more of a feature of an attachment
2 point. As long as there is some kind of body or tube
3 that contains those gases how it is attached, whether it
4 works once or a hundred times doesn't matter.

5 Q. Could a tube be attached to it without a shoulder?

6 A. Yes.

7 Q. You were asked about this test fire and the fact it
8 appeared to be louder. Again does that affect your
9 opinion at all?

10 A. No.

11 Q. Why not?

12 A. Because these parts, the 194 parts I examined
13 classified as firearm silencers are internal components
14 for firearm silencer monolithic baffles.

15 Q. Would you expect a monolithic baffle by itself to
16 ever reduce the noise?

17 A. No, sir.

18 Q. Would it only do that if there is a tube attached to
19 it?

20 A. That's correct.

21 Q. And I know Mr. Betras asked you how many times you
22 have been actually called in to testify. You said it was
23 only once?

24 A. Yes.

25 Q. Is it fair to say you are not always called

Agent Swift - Redirect

1 to testify when you do an examination. Is that
2 correct?

3 A. That's correct.

4 Q. How many times have you examined a firearm or
5 silencer in your career?

6 A. Thousands.

7 Q. Thousands. And obviously, you have not been called
8 to testify a thousand times.

9 A. No, sir, I have not.

10 Q. We talked a little bit as well about the length of
11 these various items. Why is that significant to you?

12 A. Because past approximately three inches, when a gun
13 is fired, that pressure wave, the hot expanding gases is
14 immediately dissipated on an item that is designed as a
15 muzzle brake. Adding length to it is not going to
16 further dissipate it. Most of that gas is ejected or
17 redirected immediately in front of the muzzle.

18 Q. What is the purpose, then, of making something
19 longer with additional fins on it like some of the items
20 we have seen here?

21 A. It is to make a monolithic baffle in the operation
22 of a firearm silencer.

23 Q. I know Mr. Betras asked you about pillows and
24 potatoes. Would it be fair to say potatoes have
25 other uses besides being turned into a firearm

Agent Swift - Recross

1 silencer?

2 A. Yes.

3 Q. Same thing for pillows, right?

4 A. That's correct.

5 Q. What is the purpose of a monolithic baffle?

6 A. It is to slow and cool the hot expanding gases once
7 a shot is fired. The more effective it can do that,
8 generally the quieter it is going to make the perceived
9 sound of that firearm be.

10 Q. Does a monolithic baffle of the kind and length that
11 we have talked about here today serve any other purpose
12 than what you just described?

13 A. No, sir.

14 MR. TOEPFER: Thank you. Nothing further.

15 THE COURT: Anything.

16 MR. BETRAS: Yes.

17 REXCROSS EXAMINATION

18 BY MR. BETRAS:

19 Q. Were you given any tubes to examine in your
20 examination of this case?

21 A. No, sir.

22 Q. And I asked you — and I want to make sure — you
23 do not know the psi of a bullet exiting a firearm, do
24 you?

25 A. Well, now that you told me, I do know.

Agent Swift - Recross

1 Q. 65,000, right?

2 A. That sounds about right.

3 Q. Have you ever filled up the tire in your car?

4 A. I have added air to it. I haven't filled one up.

5 Q. And they have about 30 psis, right?

6 A. Generally, right.

7 Q. So just to give the jury some perspective
8 65,000 psis is a lot of pressure and a lot of gas, is
9 it not?

10 A. Yes.

11 Q. And the U.S. Attorney asked you about a test fire.
12 Hypothetically, if you put a tube over one of these and
13 fired it and it exploded, that would not be a silencer,
14 would it, if it exploded?

15 A. No. That would be incorrect. The classification is
16 not made on whether the item works or doesn't work,
17 whether it has design features, and by you putting that
18 tube hypothetically over any of those items, you would be
19 making a firearm silencer.

20 Q. Okay. And just so the record is clear, you were not
21 given any tubes to examine to see this, correct?

22 A. That's correct.

23 Q. And you weren't told of anyone asking for a tube to
24 be put over this, correct?

25 A. No, sir.

Agent Swift - Recross

1 Q. And so just because it could be done, therefore,
2 that's the essence of your opinion?

3 A. Classification is based on a physical characteristic
4 of the item; not whether it actually works or not.

5 Q. So your testimony to this jury is, if it doesn't
6 even work, doesn't matter?

7 A. That's correct.

8 Q. What about —

9 A. As long as it has design features and
10 characteristics of a firearm silencer, it will be
11 classified as a firearm silencer.

12 Q. In your opinion, then, just because it looks like
13 this, regardless whether it works or not, in your
14 opinion, it is a firearm silencer?

15 A. That's correct.

16 Q. Regardless of what my client's intentions may or may
17 not have been, correct?

18 A. That's correct.

19 Q. All right. You do understand that this is not a
20 strict liability statute. My client had to intend to
21 make this. You do understand that, correct?

22 A. I don't know what your client did or did not intend
23 to do with these, sir.

24 MR. BETRAS: All right. Thank you. Thank
25 you, Agent Swift. You are excused. Watch your step

Agent Swift - Recross

1 going down. Okay, folks. We will take our afternoon
2 recess, about 10 or 15 minutes, refresh yourselves, keep
3 in mind the admonition.

4 (Jury out.)

5 THE COURT: You guys can go through the
6 exhibits and if there are objections.

7 MR. TOEPFER: And I will rest subject to the
8 admission. I make a Rule 29 motion for acquittal.

9 THE COURT: It is overruled. Do you have
10 any —

11 MR. BETRAS: I have a witness.

12 THE COURT: And then that's it for you, too?

13 MR. BETRAS: Yes, your Honor.

14 But I had my computer brought up from my
15 office, and so I've got to hook it up and make sure I
16 know how to work it, so I might need a few moments.

17 THE COURT: That's okay.

18 MR. BETRAS: Thank you.

19 (Recess had.)

20 (Jury in.)

21 THE COURT: All right. You may call your
22 first witness.

23 MR. BETRAS: Thank you very much, your
24 Honor.

25 The Defendant calls Steve Howard to the

Mr. Howard - Direct

1 witness stand.

2 THE COURT: Mr. Howard, please raise your
3 right hand.

4 STEVE HOWARD

5 called as a witness by and on behalf of the Defendant,
6 being first duly sworn, was examined and testified
7 as follows:

8 THE COURT: Tell us your name, and spell
9 your name for the record.

10 THE DEFENDANT: Steven Charles Howard,
11 H-o-w-a-r-d.

12 THE COURT: Thank you. Go ahead.

13 DIRECT EXAMINATION

14 BY MR. BETRAS

15 Q. Mr. Howard, could you tell us about your education,
16 please? Tell the jury about your education.

17 A. I am a third generation gunsmith. I have an
18 Associate Arts and Science Degree in Gunsmithing from the
19 oldest gunsmithing college in the country, Fernandez
20 State in Colorado, Southern Colorado specifically. I
21 have a Bachelor of Science Degree in Criminal Justice
22 with training as an investigator. I am a graduate of the
23 United States Law Enforcement Training Academy in Glynnco,
24 Georgia. I have a JD out of Cooley Law School in
25 Lansing, Michigan.

Mr. Howard - Direct

1 Q. You are a lawyer, too?

2 A. Yes.

3 Q. The jury might not know what a JD means. And could
4 you tell us about your employment history?

5 A. All my life I worked as a gunsmith since 5 or 6.
6 Since I was 12, I was as good as my father. By the time
7 I was 14, I was better than my father. At 19, we stopped
8 working in the garage if you want to call it that and had
9 a store front, which we ran for six years.

10 From there, I went back to school, and my
11 father continued the trade. I always worked the trade.
12 It is like practicing law, you never get out of it.
13 Starting about 1980, I did consulting, security based and
14 firearms based, and starting about 2002, I started
15 working as an expert witness.

16 I worked as an expert witness before, but
17 things never got past the refusal of a deposition, for
18 example. And I work now about equal time, both as a
19 practicing attorney in the state of Michigan and as an
20 expert witness in firearms related matters.

21 Q. Have you been qualified before to testify in federal
22 court about firearms?

23 A. Yes, twice.

24 Q. And have you been qualified in state court to
25 testify about firearms?

Mr. Howard - Direct

1 A. Yes, in 14 states to include, I believe, Ohio.

2 Q. Are you familiar with the Federal Firearms Act?

3 A. Yes. I haven't memorized the whole thing, but,
4 yes.

5 Q. And have you taught anywhere?

6 A. I have taught continuing legal education on the
7 subject of machine guns, silencers, illegal weapons,
8 bullet ricochet, gunshot residue, how to use firearms
9 experts, the list goes on.

10 Q. Okay. Was there a time I contacted you on this
11 case?

12 A. Yes, there was.

13 Q. And what did I request that you do?

14 A. He asked me to look at specific items and tell you
15 whether they were silencers or muzzle brakes.

16 Q. All right. Let's backtrack a second.

17 Tell the jury what a muzzle brake is?

18 A. A muzzle brake is an attachment you put on the end
19 of a firearm, and they can be put on rifles, shotguns,
20 and handguns that reduce two things: One, the amount of
21 recoil coming back, the kick if you prefer the term, as
22 well as the bullet rise or jump, and there is probably
23 40 companies out there making muzzle brakes of one kind
24 or another that sell nationally that I am aware of.

25 Q. And did I ask you to look at — well, did you

Mr. Howard - Direct

1 examine, not all of them, but the majority of the
2 exhibits that are here?

3 A. Yes, I did.

4 Q. Did you come to a conclusion about whether those, in
5 your opinion, are muzzle brakes or silencer parts?

6 A. Yes, I did.

7 Q. And based upon your education and your training do
8 you have an opinion based upon a reasonable degree of
9 scientific gunsmithing certainty as to whether or not the
10 parts that we are talking about here today are silencers
11 or whether or not they are muzzle brakes?

12 A. They are muzzle brakes.

13 Q. And what do you base that opinion on?

14 A. The fact that I have been working on silencers
15 pretty much my whole life. Silencers, like machine guns,
16 like cars, like so many other things, they are machines.
17 They clog up, they wear out. They have to be repaired.
18 As the agent whose name I have already forgotten to my
19 ever loving shame. I am terrible with names.

20 THE COURT: Swift.

21 A. (Continuing) Stated you can get a license to
22 manufacture yourself a silencer. I would assist people
23 in making these silencers, and it is perfectly legal.
24 The only problem is that the parts have to be in the same
25 room with the owner all the time.

Mr. Howard - Direct

1 MR. BETRAS: Your Honor, if he could step
2 down and do an examination.

3 THE COURT: Sure.

4 BY MR. BETRAS:

5 Q. I am handing you what has been marked for
6 identification purposes as Government's Exhibit 1,
7 Government's Exhibit 2 and Government's Exhibit 35. Do
8 you recognize each of these?

9 A. Yes.

10 Q. The Government's witness said the item in your right
11 hand is a muzzle brake, but the item in your left hand is
12 a silencer part. Do you agree with that?

13 A. I do not.

14 Q. And why do you not agree with that?

15 A. Because there is no way to attach a tube on this,
16 and this is a beautifully designed state of the art
17 muzzle brake that I have never seen the likes of before.
18 It is phenomenal.

19 Now, what makes it so much different than
20 this one is, it has got a great big hole that you can
21 literally see through. So as the good agent testified,
22 in about 3 inches ineffective gas is blown off, but what
23 makes this one so much different is the holes are very
24 small, and the diameter is very — you can see the
25 difference in the diameters on the ends. Anyone with

Mr. Howard - Direct

1 halfway normal eyesight can see.

2 Can I get closer?

3 THE COURT: Sure.

4 THE WITNESS: Thank you.

5 With the Court's permission, you can
6 see these holes are so much different. Now, this is
7 very, very crucial in making a muzzle brake more
8 effective.

9 BY MR. BETRAS:

10 Q. You can have a seat back there.

11 A. Well, I still need to respond explain how it works.

12 Q. Thank you.

13 A. Now, with this, once the bullet gets to about here
14 the gas can jump around it wherever it wants, and by the
15 time it gets to about this much distance, it is stopped
16 being forced out to the sides, and a lot of it just blows
17 wherever it wants.

18 But now, with this small diameter and all of
19 these flutes — and you can see all of these flutes
20 points toward the rear — so the gas comes out of the
21 first hole, strikes this flange and is forced back into
22 the rear.

23 And because of the small diameter — in
24 fact, we have a large volume of gas, and I mean a lot.

25 223/5.56 natone —

Mr. Howard - Direct

1 Q. What is that?

2 A. That's the M-16 model. 223/5.56 millimeter natone
3 also known as the AR 15 and M-16 model, uses 28 grains of
4 gun powder, which is quite a bit. I use that caliber to
5 kill deer in many states.

6 Now, as the gas is pushing out here, the
7 small diameter of the exit holes here can't bleed out all
8 that gas at once, and it is designed this way because
9 then the bullet continues forward, and it goes past this
10 second hole, and it repeats the process.

11 It hits this one and forces it to the rear
12 as well and the next one and the next one and the next
13 one, all the way up to here. In fact, if you have a long
14 enough one clear up to here because that much gas creates
15 a balloon of gas about this big?

16 And when you have got these tiny little
17 holes, it will all not be blown out in 3 inches. It is
18 just not going to happen. But because it progressively
19 bleeds the gas and Newton's law, for every action there
20 is a reaction, it comes out and strikes these flanges,
21 thrown back into the rear, that pushes the muzzle brake
22 forward, which, with it, pushes the firearm forward, and
23 when it does that, it kills the recoil, and with the test
24 that I conducted, you are going to see how it kills 50
25 percent of the recoil.

Mr. Howard - Direct

1 Q. All right. Have a seat. Did you do a test fire in
2 this case?

3 A. I did, sir.

4 Q. And have you done test fires before in cases?

5 A. Yes, I have.

6 Q. And what was the purpose of you doing a test fire in
7 this case?

8 A. To determine, to prove or disprove a theory, and in
9 this case, standard scientific operational procedure is
10 to develop a theory and then attempt to prove or disprove
11 it.

12 Q. Did you video your test fire?

13 A. Yes, I did, and so did others.

14 MR. BETRAS: Can we play this? Your Honor,
15 will this show up on the screen.

16 THE COURT: If I put it on the computer it
17 will.

18 BY MR. BETRAS:

19 Q. If you can narrate what's happening.

20 (Video played.)

21 A. Now, the firearm is suspended by two ropes to where
22 it is held by gravity, and there is a dowel affixed to
23 the back of the butt plate and a ruler yardstick laying
24 on the ground. This shows us how far it is thrown back.
25 Now, I am using a cable that measures how far it is

Mr. Howard - Direct

1 kicked to the rear.

2 Q. Okay. And that's without the brake on it, correct?

3 A. Well, we tried a couple of different brakes, and
4 then we tried the item in question.

5 Now, with no brake, it kicked it back 21
6 inches. So basically, the recoil, just the recoil threw
7 it backwards 21 inches.

8 We then tried it with the factory equipped
9 flash hider and threw it back 21 inches.

10 MR. BETRAS: Can we play that?

11 (Video played.)

12 BY MR. BETRAS:

13 Q. Okay. So did you affix a muzzle brake similar to
14 the one that we were talking about here?

15 A. I affixed one similar to that at one point, and it
16 barely made a difference. I mean — may I refer to my
17 notes?

18 Q. Yes.

19 A. There was no appreciable change.

20 Q. So that muzzle brake, at least one similar to that,
21 didn't do what it was intended to do?

22 A. It did pretty much nothing.

23 Q. And when you took this piece and put it on, tell the
24 jury what happened.

25 A. Instead of being kicked back 21 inches, it was

Mr. Howard - Direct

1 kicked back 11, which is almost right at a 50 percent
2 reduction in recoil.

3 Q. Have you ever seen a muzzle brake give you a
4 50 percent recoil?

5 A. Recoil reduction? Do I understand the question
6 correctly?

7 Q. Yes.

8 A. No, I have not.

9 Q. In all your years?

10 A. And I am a speed shooting competitor. I am a former
11 Michigan three gun champion, which is speed shooting with
12 semiautomatic rifles. And this muzzle brake is so
13 fantastic that I would put them on all my guns if I
14 could. That allows me to shoot 50 percent faster, and
15 this advantage alone would allow me to just blow away my
16 competitors, all of them.

17 Q. And other gun enthusiasts would recognize the value
18 of this muzzle brake?

19 A. Instantly. If I were to take a big bag of the
20 finished products to a three-gun shoot, I could probably
21 sell one to almost every single competitor on the spot.

22 Q. Have you ever seen anything of this size before you
23 have seen these?

24 A. No, I have not. And I am convinced its length is a
25 big part of what makes it so effective.

Mr. Howard - Direct

1 Q. Now, you heard the special agent testify that you
2 could put a tubing on this; that it is a part of a
3 silencer. You heard that testimony.

4 A. I did.

5 Q. You were in here when he did that. And he said
6 whether it works or not is immaterial. Do you agree with
7 that assessment?

8 A. No, I don't.

9 Q. Why?

10 A. That's basically guilt by association then. I mean,
11 somebody takes a Ford truck and runs over a bunch of
12 people, you going to prosecute the guy who put the truck
13 together?

14 But physically, in terms of doing it, the
15 M-16 round, the AR 15 round operates at 56,000 psi.
16 There is no way to attach a tubing on the outside of
17 these muzzle brakes.

18 Q. Why do you say that?

19 A. Well, one, there is no place to thread it in.

20 Q. Now, when you say thread it in, are you referring to
21 Government's Exhibit 33 and Government's Exhibit 34?
22 What's the significance of these?

23 A. Well —

24 MR. BETRAS: Can he go down and show the
25 jury, your Honor?

Mr. Howard - Direct

1 THE COURT: Sure.

2 THE WITNESS: This is probably easiest to
3 understand.

4 If I may, may I approach the jury? This is
5 rather small.

6 THE COURT: Sure.

7 A. Now, this to be especially made to go on this, and
8 it is a very precise piece of machine and threads on. It
9 is very, very solid. And at the back towards where it
10 screws into the rifle, there are threads right here that
11 allows you to do this. I will try and walk down so
12 everybody can see this.

13 There are threads where my finger is, and it
14 is bigger around where the threads are than the rest of
15 the tube. But yet, on the item in question, it is all
16 the same size, the whole length. So how do you put a
17 thread on it? The simple answer is you don't.

18 Now, duct tape and conduit and PVC pipe when
19 it is this small cannot contain 65,000 pounds. It just
20 can't happen. Now, if you made one this long and about
21 that big around, sure, it would contain it, but something
22 this small, it would blow it to pieces.

23 Now, what else is interesting is these types
24 of silencers, notice how they don't have little small
25 holes that forces the gas to continue going down the tube

Mr. Howard - Direct

1 the way this one does.

2 A third major difference is this is either
3 steel or titanium, and not only is it steel, it is very
4 special steel. It is rich with nickel, not the
5 nickel-silver that we have in our pockets but nickel, and
6 that makes it stand the heat.

7 Now, this doesn't have to stand a lot of
8 heat, and it doesn't have to stand a lot of pressure
9 because it is venting that pressure and giving off that
10 heat because it is not designed to be contained in a
11 tube.

12 It is meant to throw off the gas and,
13 therefore, throw off the heat. This has to contain it.
14 That's why it is made out of special alloy. If this was
15 made out of steel, the Government might be right, but
16 it is not. It is made out of your run-of-the-mill
17 aluminum.

18 Q. How hard is it to weld aluminum to aluminum?

19 A. You have to have special equipment, and it is
20 difficult because the aluminum warps. Ask any welder.
21 It warps badly. So unless things are precisely machined
22 and this isn't, it doesn't need to be on the outside,
23 just needs to be on the inside, it is not going to stand
24 up.

25 It is literally when it is forcing into one,

Mr. Howard - Direct

1 it is going to cave in to the other, and on the front
2 end, it will blow the flanges off because the way this
3 thing is designed. The reason it doesn't is, again,
4 because it is able to vent that gas out the sides, and
5 the pressure doesn't build up. It redirects it. This
6 captures it. That's the big difference. That's the
7 difference between a muzzle brake and a silencer.

8 Q. So you disagree with the Government's expert witness
9 that you could simply put a tube over this, and somehow
10 that's going to make it work?

11 A. I disagree completely, yes.

12 Q. And you disagree with the Government's — have a
13 seat up there — assertion about longer than three
14 inches?

15 A. Yes, I disagree with the Government's assessment
16 that length makes it a silencer. Length makes it more
17 efficient for what it was designed to do. On normal
18 designs of silencers, they are right; that where there is
19 a big escape around the bullet and things are not
20 precisely machined, they are right, and I played around
21 with some of these years ago, and yeah, after about
22 three, three and-a-half inches, depending on a number of
23 variables, maybe four, it becomes counterproductive?

24 But when you shrink the bore holes down that
25 surround the bullet and where the gas escapes, that —

Mr. Howard - Direct

1 those rules are shattered. This is the probably the most
2 revolutionary muzzle brake I have ever seen. It blows my
3 mind.

4 Q. I assume your opinion is, this is not a
5 silencer part because it cannot be readily made into
6 a silencer?

7 A. No. If somebody really wants to work hard enough,
8 you can make a silencer out of pretty much anything.
9 Again, you can use a potato. You can use a towel. You
10 can get a piece of tube and weld it to a regular flash
11 hider, dump a bunch of flash hidere down the tube and
12 weld a cap over the top with a hole in the middle, and it
13 is a silencer. So I mean, everything can be made a
14 silencer if you tried hard enough.

15 Q. The Government's contention is that this is made
16 specifically designed so you can put a tube over it. You
17 heard that testimony?

18 A. I heard that testimony, yes.

19 Q. Are you a machinist?

20 A. Yes, I am and a welder.

21 Q. And a —

22 A. And a welder.

23 Q. And a welder. Are these muzzle brakes precisely
24 machined?

25 A. No.

Mr. Howard - Direct

1 Q. What's the significance of these muzzle brakes not
2 being precisely machined?

3 A. If the outside tube does not fit precisely,
4 especially on a metal that can give like aluminum —
5 let's say there is a gap and the pressure hits one
6 chamber, it can sit and go look this and break. It has
7 to be up against it to stop it from moving that way,
8 especially when you are talking 65,000 pounds per square
9 inch.

10 Q. I am going to ask you a hypothetical question.

11 Hypothetically speaking, if you were to put
12 a tube over one of these muzzle brakes and then ratchet
13 it down with a screw, do you have an opinion as to what
14 would happen when you fired that.

15 A. I am not sure, ratchet it down with a screw. You
16 mean put a cross screw in it, for example?

17 Q. Yeah.

18 A. Well, since they are so imprecisely machined, first
19 of all, you would have to — you'd have two choices.
20 Either, one, you would either have to machine the inside
21 of the tube to fit the individual muzzle brake, in which
22 case if you have got machine tool equipment that is that
23 good and you have that much skill, you don't need to buy
24 that product to make a silencer, or there is going to be
25 a big gap right around here between the internal and the

Mr. Howard - Direct

1 outer pipe.

2 And when you pull the trigger with that much
3 pressure, it is going to blow right back — a certain
4 portion of that gas and burning gun powder is going to
5 blow right back in your face. So —

6 Q. It would be very dangerous is what you are saying?

7 A. Yes, especially to your eyesight.

8 Q. I think we talked about progressive gas bleed. Do
9 you recognize a called concept progressive gas bleed?

10 A. Yes.

11 Q. What is progressive gas bleed?

12 A. That's what I discussed where on each set of flanges
13 it bleeds only a little bit, and it progressively bleeds
14 more and more because as number 2, number 3, number 4,
15 and number 5 holes are bleeding it, number one is still
16 bleeding it and still pushing, so it progressively bleeds
17 the gas the whole length of the muzzle brake and thereby
18 allows a longer muzzle brake to be more effective.

19 MR. BETRAS: Thank you. One second, your
20 Honor.

21 (Pause.)

22 MR. BETRAS: I will pass the witness, your
23 Honor.

24 THE COURT: Thank you.

25 Ms. Henderson?

Mr. Howard - Cross

1 CROSS EXAMINATION

2 BY MS. HENDERSON

3 Q. Mr. Howard, you talked briefly on direct about your
4 education, correct?

5 A. Yes.

6 Q. And you talked about your Bachelor's Degree you
7 received in criminal justice?

8 A. Yes, ma'am.

9 Q. And is it true you started Pikes Community College
10 in 1983 studying criminal justice?

11 A. I only took specific courses that I thought would be
12 useful in becoming a law enforcement agent.

13 Q. Directing you back to my question, you were
14 studying criminal justice, police science, and police
15 firearms?

16 A. Yes, as well as fingerprints and police photography,
17 and I forget what else.

18 Q. And then you attended Southern Colorado in 1985, and
19 you studied criminal justice?

20 A. Yeah. For a short period, yes.

21 Q. And both of those short periods, you did not obtain
22 a degree, correct?

23 A. I was not after one at the time.

24 Q. And then, you attended Metropolitan State College of
25 Denver, again studying criminal justice?

Mr. Howard - Cross

1 A. Yes.

2 Q. And then you obtained a degree in December of
3 1989?

4 A. Yes, ma'am.

5 Q. After that, you went to go work at your father's gun
6 repair shop? You talked about that.

7 A. I kind of never stopped.

8 Q. But at this point, as you testified on direct, this
9 is the point where you guys, I guess as you said, took it
10 out of the garage, and you opened up a shop?

11 A. Yes, which we closed down in '86.

12 Q. Okay. And when you guys opened the shop, your
13 father had a firearms repair license, correct?

14 A. Sales and repair and ammunition sales license, yes,
15 a Class 1.

16 Q. And he obtained that license from ATF?

17 A. We took it over from a man named Bob Humphries,
18 transferred the shop, and yes, the license was issued
19 from ATF, yes.

20 Q. And that license was required to run the shop?

21 A. To simply repair firearms, no. But to sell
22 firearms, yes.

23 Q. To sell firearms you needed that license?

24 A. I can't hear you.

25 Q. To sell firearms at that shop, you needed a

Mr. Howard - Cross

1 license?

2 A. Yes, ma'am, and to sell ammunition as well.

3 Q. And after your employment there and everything, you
4 decided to go to law school at some point?

5 A. Yes.

6 Q. I'm sorry. Before we get to law school, after that,
7 working for your father, you were unemployed from 1989 to
8 1992. Is that correct?

9 A. No. I just didn't list the relevant things that I
10 was working.

11 Q. So your —

12 A. I was a security guard at hospitals, and I worked
13 security guard at supermarkets, basically put myself
14 through school. They were not really relevant to what I
15 do, so I left them off the CV.

16 Q. And then, in 1992, you started at U.S. Border Patrol
17 as a field agent?

18 A. Yes.

19 Q. And this is when you referred to on direct you went
20 to law enforcement training?

21 A. Yes.

22 Q. And you worked there for nine months?

23 A. Yes, ma'am.

24 Q. And you left because you didn't like Border
25 Patrol?

Mr. Howard - Cross

1 A. No. I couldn't learn Spanish fast enough.

2 Q. And you decided you would prefer to go to ATF?

3 A. No.

4 Q. You wanted to be an ATF agent?

5 A. I think I applied at one time, but I couldn't score
6 highly enough on the test to get in.

7 Q. You couldn't score highly enough on the test to get
8 into ATF?

9 A. There was an entrance test and —

10 Q. And you couldn't pass it?

11 A. I couldn't pass it.

12 Q. And do you remember your father sending a letter to
13 ATF asking if it would be possible for you to transfer
14 to there while you were in training for Border Patrol?

15 A. I don't recall.

16 Q. So that was unsuccessful. You still didn't get into
17 ATF?

18 A. No. I didn't get into ATF.

19 Q. After you left Border Patrol, you went to work as an
20 office manager at Parkside Center?

21 A. No. I worked for — I worked on and off for them on
22 a couple of occasions but I went to work for Department
23 of Defense, Federal police.

24 Q. Before that, though, you were at Parkside Center,
25 correct?

Mr. Howard - Cross

1 A. Yes.

2 Q. And you were there for only six months?

3 A. I don't remember the exact time.

4 Q. It was a short period of time?

5 A. Yes.

6 Q. And after that, as you stated, you went to go work
7 for the Department of Defense, Federal Police, as a
8 federal police officer?

9 A. Yes, ma'am.

10 Q. And again, you were only there for six months?

11 A. Yes, ma'am. I got hurt on the job.

12 Q. So your two positions working in law enforcement
13 total 15 months?

14 A. Yes, ma'am.

15 Q. Okay.

16 A. Long enough to get the training.

17 Q. And after that, you went to go work at C Sharps
18 Arms?

19 A. Yes, a firearms manufacturer.

20 Q. And you worked there for a little over a
21 year-and-a-half?

22 A. Yes.

23 Q. Okay.

24 A. While I prepped for the law school entrance test.

25 Q. Directing you back to my question, you worked there

Mr. Howard - Cross

1 for a little over a year and a half?

2 A. That is correct, Ma'am.

3 Q. And then you went to law school?

4 A. Yes, ma'am.

5 Q. And you went to law school at Thomas Cooley School
6 of Law in Michigan?

7 A. Yes, ma'am.

8 Q. And there you focused on wills, trusts, and
9 estates?

10 A. No. That's what I got the book award in. It is a
11 required class, but that was not my concentration.

12 Q. Not only getting the book award, didn't you work as
13 a research assistant and do a lot of other things in that
14 area?

15 A. I did research for a number of instructors, for a
16 number of different things.

17 Q. One of them was wills, trusts, and estates?

18 A. Yes.

19 Q. And that's the one on your curriculum vitae?

20 A. Yes.

21 Q. You didn't focus on firearms laws while you were in
22 law school?

23 A. No.

24 Q. After that, you continued to work — after law
25 school, you continued to work as a paralegal for a little

Mr. Howard - Cross

1 while?

2 A. A short period at the law firm where I had done my
3 required externship, yes.

4 Q. And then you started your own firm?

5 A. Yes.

6 Q. And ever since then, you have been self-employed as
7 a lawyer, and you've also been consulting?

8 A. And testifying, yes, Ma'am.

9 Q. Which is a part of your consulting business,
10 correct?

11 A. Correct.

12 Q. And as a lawyer, you advise clients on the law?

13 A. Yes.

14 Q. You work in a variety of areas, family law, contract
15 law, real estate law, immigration, those are all areas
16 you work in?

17 A. Yes, ma'am.

18 Q. And you can't know everything about the law
19 concerning those topics, correct?

20 A. Correct.

21 Q. So when clients come to you for advice about whether
22 or not something is illegal, you have to research the
23 law?

24 A. Sometimes, yes.

25 Q. If you didn't research the law, it would be

Mr. Howard - Cross

1 considered malpractice?

2 A. If I already know what the law is.

3 Q. So if you didn't know the law and didn't research
4 it, it would be malpractice?

5 A. That's assuming I didn't already know it, yes, and I
6 would research it if I had not already researched it.

7 Q. And you would agree with me that sometimes the law
8 isn't on your side?

9 A. That's a very vague question, Ma'am. I would need
10 a more specific question in order to answer it
11 truthfully.

12 Q. Sometimes there could be an unfavorable case law
13 precedent in the area?

14 A. In regard to what? I am afraid you have confused
15 me.

16 Q. Sometimes your clients may have an issue, and you
17 may go to research the law, and the law might not turn
18 out with the result that they want. Isn't that
19 correct?

20 A. Yes, that's possible.

21 Q. You still have an obligation to advise your client
22 on what the law is. Isn't that correct?

23 A. If they want my advice, yes.

24 Q. So you advise them what the law is rather than what
25 they want the law to be, correct?

Mr. Howard - Cross

1 A. Correct.

2 Q. Additionally, as a lawyer, you have to follow
3 certain rules?

4 A. Yes.

5 Q. And an example of rules, each court may have
6 different rules. Isn't that correct?

7 A. They all fall within certain parameters, but yes,
8 some have procedural rules that vary from others, that's
9 correct.

10 Q. And if you go to another court you are not
11 familiar with, you have an obligation to follow their
12 rules?

13 A. True.

14 Q. This may require looking up the rules before you
15 go?

16 A. Not necessarily.

17 Q. Or when you get there, you look up the rules?

18 A. Or ask.

19 Q. So at some point, you either look or you ask for the
20 rules, correct?

21 A. If I know there is a possible problem. For example,
22 I don't need to ask for the specific rules to simply file
23 an appearance.

24 Q. Now, let's talk about your training.

25 You have never received manufacturing

Mr. Howard - Cross

1 and historical instruction at a firearm factory, have
2 you?

3 A. Can you repeat the question?

4 Q. You never received manufacturing or historical
5 instruction at a firearm manufacturing factory, have
6 you?

7 A. Yes, I have.

8 Q. You have toured a manufacturing firearm factory?

9 A. I worked at one.

10 Q. Directing you back to my question, you haven't
11 received training at one in this area since you have been
12 consulting?

13 A. You didn't say about silencers, or did you?

14 Q. No.

15 A. I don't remember you saying that.

16 Q. I am talking about firearm factories. Have you
17 received training on manufacturing and historical
18 instruction at a firearm factory?

19 A. Yes, C Sharps Arms.

20 Q. And when was that?

21 A. It is on my resume. That was 1994 through almost
22 1996, I think.

23 Q. And that's the only manufacturing company you have
24 ever received instruction at?

25 A. Specifically. We received a great deal of

Mr. Howard - Cross

1 manufacturing principle and historical training to
2 include silencers and machine guns at Trinidad State
3 Junior College in my gunsmithing career, my gunsmithing
4 education.

5 Q. That was not a manufacturing facility.

6 A. No. How much can you learn in one day of walking
7 through the plant?

8 Q. You only walked through one plant, correct?

9 A. But I studied the manufacturing techniques of
10 probably 30.

11 Q. Directing you back to my question, you've walked
12 through one plant?

13 A. No, two.

14 Q. You don't list any of these other plants in your
15 curriculum vitae?

16 A. I didn't consider it important enough. I walked
17 through the place. So what? It didn't seem important
18 enough to put on the CV.

19 Q. And when you walked through the plant, you didn't
20 receive training?

21 A. No. I was just given a tour. It just didn't seem
22 important.

23 Q. So it was not training?

24 A. Depends on your definition of training, but they sat
25 and explained the principles of how they make their

Mr. Howard – Cross

1 product and how things are done, and yeah, that's fine, I
2 knew that. Thank you for telling me.

3 Q. And so you don't think learning how firearm products
4 are manufactured and how they are done is significant to
5 this case?

6 A. I already know how firearms are manufactured and how
7 silencers are manufactured.

8 Q. Now, moving on, you've also never attended a
9 training specifically focused on the manufacture, design,
10 or operation of firearm silencers?

11 A. We covered it specifically in my college education
12 at Trinidad, yes.

13 Q. Never from a firearm manufacturer?

14 A. I'm sorry?

15 Q. Never from a firearm manufacturer?

16 A. No.

17 Q. You also never received training on the Gun Control
18 Act of 1968?

19 A. I have read it. I haven't memorized it, but I have
20 read it.

21 Q. You haven't received training on it?

22 A. I think we covered it in one of the criminal classes
23 that I took in law school, but I couldn't tell you which
24 one.

25 Q. Directing you back to my question, you never

Mr. Howard – Cross

1 received training on that?

2 MR. BETRAS: Objection, your Honor.

3 THE COURT: Overruled.

4 A. Yes, I have. Not a ton, but yes, I have.

5 Q. You have never received training on the National
6 Firearms Act of 1934?

7 A. Yes, I have in Trinidad specifically.

8 Q. Now, going back — going to instruction,
9 you've never taught at the ATF special agent basic
10 training?

11 A. No.

12 Q. You have never taught at the NEA Firearms
13 Identification Course on foreign law enforcement?

14 A. No.

15 Q. You never taught a firearms identification
16 course?

17 A. Yes, I have.

18 Q. Are you familiar with ATF? You are familiar with
19 ATF?

20 A. Yes.

21 Q. You know that they regulate firearms?

22 A. Yes.

23 Q. Are you familiar with the ATF Handbook?

24 A. No.

25 Q. So you are not familiar with the book that talks

Mr. Howard - Cross

1 about whether or not firearms are regulated?

2 A. I called ATF and tried to get a copy of the book,
3 and they said it is all online, read it online.

4 Q. And you never went online?

5 A. You didn't ask me that. I have been reading it
6 online.

7 Q. So you are familiar with it?

8 A. Define "familiar." Have I read the whole thing?
9 No. I read parts, yes.

10 Q. You read parts, and you know what it is?

11 A. Yes.

12 MS. HENDERSON: May I approach the witness,
13 your Honor?

14 THE COURT: You may.

15 BY MS. HENDERSON

16 Q. I am handing you a copy of the ATF Firearms
17 Handbook.

18 Now, you would agree with me that ATF
19 provides license for those who desire to manufacture and
20 deal in firearms.

21 A. For those operating in the United States, yes.

22 Q. Such as your father, correct?

23 A. Yes.

24 Q. And a person that desires to make a National
25 Firearms Act firearm that does not have a license must

Mr. Howard – Cross

1 submit a form. You would agree with that?

2 A. If they are making a firearm, yes, but not if they
3 are — not if they are making a muzzle brake.

4 Q. But if they are making a firearm, you agree they
5 need to submit a form?

6 A. I'm sorry?

7 Q. If they are making a firearm, you agree they need to
8 submit a form?

9 A. If they are making a firearm, yes. Muzzle brakes
10 are not firearms.

11 Q. Now, I would like to direct your attention to
12 Section 7.2.4 in there. I believe I have it tabbed in
13 there for you?

14 A. Green or —

15 Q. Pink.

16 A. Pink. Okay. What about it?

17 Q. Could you please read that provision to the
18 jury?

19 A. Which one?

20 Q. 7.2.4.

21 MR. BETRAS: Objection your Honor.

22 THE COURT: Overruled.

23 Q. 7.2.4?

24 A. "Do you know how ATF would classify your product?

25 There is no requirement in the law or regulations for

Mr. Howard – Cross

1 manufacturer to seek ATF classification for his product
2 prior to manufacture."

3 Q. Could you continue, please?

4 A. I'm sorry.

5 Q. Could you please continue?

6 A. "Unless a firearm manufacturer is well advertised"

7 —

8 Q. Could you go back and start at "nevertheless"?

9 A. "Nevertheless firearm manufacturers well advised to
10 seek ATF classification before going to the trouble and
11 expense of producing it."

12 Q. You can continue.

13 A. Says "advised" not "required."

14 Q. Could you please go ahead and read it?

15 A. "Perhaps the manufacturer intends to produce a GCA
16 firearm but not an NFA firearm. Submitting a prototype
17 to ATF — ATF's Firearms Technology Branch for
18 classification in advance of manufacture is a good
19 business practice to avoid an unintended classification
20 or violation of law."

21 Q. Could you now go down to Section 7.2.4(1) right
22 under that, I believe?

23 A. "ATF classification letters. ATF letter ruling
24 classifying firearms may generally be relied upon by the
25 recipients as the agency's official position concerning

Mr. Howard – Cross

1 the status of firearm under the federal firearms law.
2 Nevertheless, classifications are subject to change if
3 later determined to be erroneous or impacted by
4 subsequent changes in the law or regulations. To make
5 sure their classifications are current, FFLs/SOTs should
6 stay informed by periodically checking the information
7 published on ATF's website, particularly amendments to
8 the laws or regulations, published ATF rulings and open
9 letters to industry members."

10 Q. So you would agree with me that the ATF handbook
11 recommends that if someone wants to make a firearm, that
12 they should contact the ATF Firearms Technology Branch
13 for clarification.

14 MR. BETRAS: Objection.

15 THE COURT: Overruled.

16 A. Only if they are making a firearm. He is not making
17 a firearm.

18 Q. You would agree it says if you are thinking about
19 making a firearm.

20 A. If you are making a firearm, and that's not the
21 case. This is apples and oranges.

22 Q. Are you familiar with the definition of "firearm"
23 under the Gun Control Act?

24 A. No, I am not.

25 Q. You are not familiar with the definition under the

Mr. Howard - Cross

1 Gun Control Act?

2 A. Not off the top of my head.

3 Q. And you are not familiar with the definition of
4 firearm silencer under at any Gun Control Act?

5 A. A firearm silencer I am.

6 Q. So you do know the definition of a firearm includes
7 firearm silencer?

8 A. Yes.

9 Q. So you are familiar enough to know that this term
10 "firearm" also includes "silencer"?

11 A. Yes.

12 Q. So if a person wants to make a silencer, you would
13 agree that the ATF handbook recommends that they contact
14 the ATF Firearms Technology Branch first for
15 clarification?

16 MR. BETRAS: Objection, your Honor.

17 THE COURT: Overruled.

18 A. Only if they want to make a silencer. He didn't
19 want to make a silencer; he wanted to make a muzzle
20 brake. He is not required to do anything.

21 Q. And you would agree with me if a person had done
22 that and got a classification letter, then they would be
23 able to rely on that letter?

24 A. Unless ATF changes its mind again.

25 Q. Well, if you — go back to what you just read. You

Mr. Howard - Cross

1 agree it says that if you obtain a letter, then you can
2 rely on that letter?

3 A. But only if you are trying to make a firearm. He
4 was not making a firearm.

5 Q. Now, going back to those definitions, you said
6 you are familiar with the definition of firearm
7 silencer?

8 A. Yes.

9 Q. Can you tell us what it is?

10 A. A firearm that is attached — and I am paraphrasing
11 here — that tends to silence or muffle a shot.

12 Q. You are leaving out a lot of that definition,
13 correct?

14 A. Yes, but that's the high points.

15 Q. The high points?

16 A. Only this doesn't muffle it. It makes it
17 louder.

18 Q. You would agree with me that that definition —
19 oh, if you would turn to that second tab there, here
20 the definition of firearm silencer so we don't have to
21 guess.

22 A. "Any device for silencing, muffling, or diminishing
23 a report of a portable firearm including any combination
24 of parts designed or — designed or redesigned and
25 intended for use in assembling or fabricating a firearm

Mr. Howard - Cross

1 silencer or firearms muffler and any part intended for
2 use in such assembly or fabrication."

3 Q. So you would agree with me that a part of a firearm
4 silencer is considered a firearm silencer?

5 A. If somebody intentionally makes it as a firearm
6 silencer part, yes. He didn't do that; he made a muzzle
7 brake.

8 Q. Okay.

9 A. That's not a silencer part.

10 Q. Directing you back to my question, you agree that a
11 firearm silencer part would also be classified as a
12 firearm silencer.

13 A. And again, I say yes, only if you intentionally make
14 a firearm silencer part, which he did not do.

15 Q. Now, Mr. See's attorney retained you to testify as
16 an expert in this case?

17 A. Yes.

18 Q. Mr. See did not retain you when he began
19 manufacturing the parts in question, did he?

20 A. No, he did not.

21 Q. Mr. See did not ask you for advice on whether or not
22 these parts were legal before he made them?

23 MR. BETRAS: Objection, your Honor.

24 THE COURT: Objection sustained.

25

Mr. Howard – Cross

1 BY MS. HENDERSON:

2 Q. Mr. See did not retain you when he began selling
3 these items on eBay?

4 MR. BETRAS: Objection, your Honor.

5 THE COURT: He already answered that
6 question.

7 BY MS. HENDERSON:

8 Q. Mr. See did not retain you on January 20, 2016, when
9 the ATF agents came to his house to check, to see if he
10 was making silencers?

11 MR. BETRAS: Objection, your Honor.

12 THE COURT: Objection sustained.

13 BY MS. HENDERSON

14 Q. The first time you were retained in this case was on
15 August 31, 2016, after Mr. See was indicted?

16 A. I don't remember the exact date. It is in my
17 report.

18 Q. It was after Mr. See was indicted in this case?

19 A. That is my understanding, yes.

20 Q. Now, let's talk about your analysis in this case.
21 You contend that most muzzle brakes are about two inches
22 long?

23 A. I stay with — I stay with ATF's definition of
24 between 2 and 3 inches, most of them, yes.

25 Q. And, in fact, you testified on direct examination

Mr. Howard - Cross

1 that you have never seen a muzzle brake of this size?

2 A. That is correct. I have also never seen one that
3 worked as well, either.

4 Q. You agree with me that most of the parts
5 manufactured by Mr. See were 6 to 8 inches?

6 A. I couldn't hear you, Ma'am.

7 Q. You agree that most of the parts manufactured by
8 Mr. See were 6 to 8 inches?

9 A. I don't remember off the top of my head.

10 Q. But you agree they are significantly longer than
11 what a muzzle brake should be?

12 A. Well, not should be. I think they should be any
13 length they serve a purpose and work, but it is ATF that
14 decides they should be no longer than three inches. But
15 I don't hold with that opinion at all, especially in
16 light of this case.

17 Q. And let's talk about the testing you did in this
18 case.

19 Now, you testified on direct that as part of
20 your testing you looked at factory muzzle brakes?

21 A. Yes.

22 Q. And you stated that first you tested it with the
23 factory muzzle brake on, correct?

24 A. I don't remember the specific order. I don't have
25 my report in front of me, but I tested it both with the

Mr. Howard - Cross

1 muzzle brake simply rubberbanded to the outside of the
2 barrel so the firearm would weigh the same.

3 If you make it lighter, it is going to
4 recoil more, simple physics there, and then either before
5 or after, then I, again, tried its proper position, and
6 it was done that way with all of the muzzle brakes that I
7 tested, including the one in question.

8 Q. Okay. So at some point, you tested it with what
9 you called a flash hider muzzle brake with it on,
10 correct?

11 A. Yes.

12 Q. And when you did that, the recoil was 21 inches?

13 A. Yes.

14 Q. And then you took that flash hider muzzle brake off
15 and tested it again?

16 A. Yes.

17 Q. And the recoil was still 21 inches?

18 A. Yes.

19 Q. So you agree with me that's ineffective as a muzzle
20 brake?

21 A. Yes.

22 Q. And as you testified on direct, that was a flash
23 hider?

24 A. I have tried flash hidere and muzzle brakes both.

25 Q. Directing you back to your report, the one you

Mr. Howard - Cross

1 talked about in your report and wrote about in your
2 report you would agree with me that that was a flash
3 hider, correct?

4 A. There can be those that perform both purposes. They
5 are not exclusively one or the other.

6 Q. However, this didn't perform both purposes, correct?

7 A. In my opinion, it didn't perform either purposes.
8 The old joke goes, what are fishing lures designed to
9 cash? Fishermen. They are designed to make the
10 manufacturer money. Whether they work or not is
11 irrelevant.

12 Q. So you would agree with me that this was an
13 ineffective muzzle brake?

14 A. Yes.

15 Q. And then, you compared the items that were obtained
16 from the Defendant to an ineffective muzzle brake?

17 A. Yes.

18 Q. And based on that comparison, you decided that these
19 items were a muzzle brake?

20 A. Yes.

21 Q. Now, also going to your report, in your report,
22 you said that you relied on Newton's theory of law,
23 correct?

24 A. Yes. I believe so, yes.

25 Q. Where did you look up Newton's law?

Mr. Howard – Cross

1 A. I don't remember. A long time ago in an
2 Encyclopedia Britannica.

3 Q. You don't cite to any other law in your report,
4 correct?

5 A. That's the simplest most basic scientific law I can
6 cite and certainly the most relevant.

7 Q. So you don't cite to any other law?

8 A. I don't need to. The simplest science is always the
9 best.

10 Q. And you don't cite to any peer-reviewed articles?

11 A. What's more peer-reviewed than Newton?

12 Q. You don't cite to any ATF testing?

13 A. No.

14 Q. You don't cite to any other expert testing?

15 A. Nobody has ever tested this. It is brand new.

16 Q. So you don't cite to any other testing or any other
17 law besides Newton's third principle?

18 A. That's all I needed. Why do I need a computer
19 program for the simplest of simple theories.

20 Q. Also in your report — and I believe you testified
21 about this on direct — you talked about the fact that
22 there are only two ways that a tube can be attached to
23 one of these items, correct?

24 A. For the most part, yes.

25 Q. And one of those ways you said someone would have to

Mr. Howard – Cross

1 be a good accomplished welder to do it?

2 A. Yes, to make it work and function as a silencer,
3 yes.

4 Q. But you agree it can be done?

5 A. Only if you are a master welder.

6 Q. So you agree it can be done?

7 A. Are you asking me — it is remotely possible.

8 Therefore, he could be; therefore, he will; therefore, he
9 is guilty. I would say no.

10 MR. BETRAS: Objection, your Honor.

11 THE COURT: To his answer?

12 MR. BETRAS: Well, we are way far afield
13 now. Your opinion has to be based on not mere
14 possibility. Everything is merely possible.

15 THE COURT: So you are objecting to his
16 answer?

17 MR. BETRAS: I am objecting to the question
18 because she was asking him about a possibility.

19 THE COURT: She asked about attachment of
20 something, of the item.

21 BY MS. HENDERSON

22 Q. Mr. Howard, directing you back to my question, you
23 talked about on direct two ways in which tubes can be
24 attached, correct?

25 A. Yes.

Mr. Howard - Cross

1 Q. And you said one of those ways was by a very good
2 accomplished welder, correct?

3 A. You would have to be very, very good.

4 Q. So you are admitting that it can be done,
5 correct?

6 A. I am also admitting that you can make a pillow a
7 silencer. Are all people with pillows guilty of having
8 silencers? No.

9 Q. So the answer to my question is yes?

10 A. In the completely abstract hypothetical, yes.

11 Q. Because it would be completely abstract and
12 hypothetical to have a very good and accomplished
13 welder?

14 A. Which means, theoretically, maybe a couple of
15 hundred people in this country who are aluminum welding
16 specialists could intentionally misuse this product and
17 make a silencer.

18 Q. And you also said that the second way was that
19 someone could simply slide something over the unit, but
20 that if this was done, then the hot gases would fly back
21 and hit the shooter in the face.

22 A. Yes. I have already testified to that.

23 Q. So again, you agree that it could be done?

24 A. If you don't mind losing both eyes, yes.

25 Q. Now, let's talk about your work in this case. You

Mr. Howard - Cross

1 agree with me you are self employed?

2 A. I couldn't hear you.

3 Q. You are self-employed?

4 A. Yes, ma'am.

5 Q. And you make money from consulting and from your law
6 practice?

7 A. Yes, ma'am.

8 Q. And you have testified in many cases as a firearms
9 consultant?

10 A. As a firearms expert, yes, ma'am.

11 Q. And you were paid in those cases?

12 A. Yes, ma'am.

13 Q. You are being paid in this case?

14 MR. BETRAS: Objection, your Honor.

15 THE COURT: Overruled.

16 A. I am losing about a hundred dollars an hour sitting
17 here.

18 Q. You are being paid in this case?

19 A. A hundred dollars less than if I had stayed home.

20 Q. But you do this as a living to make money,
21 correct?

22 A. Yes.

23 Q. Okay.

24 A. But I am a lot more interested in seeing that man
25 get a fair trial than I am in making money because if I

Mr. Howard – Cross

1 stayed home, I would be billing out at a hundred dollars
2 an hour more than I do while I sitting here.

3 MS. HENDERSON: Move to strike, your Honor.

4 THE COURT: Go ahead. Just ask another
5 question.

6 BY MS. HENDERSON

7 Q. You also testified on direct that the reason you
8 believe that nothing can be attached to these items is
9 because they are made out of an alloy material?

10 A. No. I testified that nothing can be attached
11 because there is no lip to put a thread and because it is
12 made out of aluminum and not steel.

13 Q. Okay. So you said because they are made out of
14 aluminum and not steel?

15 A. Yes.

16 MS. HENDERSON: May I approach the witness,
17 your Honor?

18 THE COURT: You may.

19 BY MS. HENDERSON

20 Q. I am handing you what has been marked as
21 Government's Exhibit 3. You would agree that's not
22 aluminum, correct?

23 A. I don't know what it is, but it is not aluminum.

24 Q. You would agree with me that's steel?

25 A. I don't know what it is.

Mr. Howard – Cross

1 Q. You are unfamiliar with it being steel?

2 A. Unfamiliar with it being steel?

3 Q. But it is not aluminum, correct?

4 A. It is definitely not aluminum. That I will admit.

5 MS. HENDERSON: Thank you. May I have a
6 moment, your Honor?

7 THE COURT: Sure.

8 (Pause.)

9 BY MS. HENDERSON

10 Q. Mr. Howard, when we talked about muzzle brakes
11 earlier, you agreed most muzzle brakes are two to three
12 inches. I think that's what you say in your report,
13 correct?

14 A. That's the norm in the industry.

15 Q. That's the norm. And you said that's the norm
16 because that's what ATF says that's about how long it can
17 be?

18 A. I don't know if that's the case or not. I have seen
19 muzzle brakes on M2 .50 calibers, and I am sure it is a
20 lot longer than three inches.

21 Q. But your testimony earlier today when I was
22 asking you about it is that —

23 A. I said that's the general rule.

24 Q. And you also said because if it were anything
25 longer, then ATF would call it a silencer?

Mr. Howard – Cross

1 A. I don't remember saying that at all, no.

2 Q. You would agree that anything longer ATF would call
3 it a silencer?

4 A. Given their behavior in this case, yes, I think they
5 probably would just based on the length alone.

6 Q. And you would disagree with that?

7 A. Yes, I do.

8 Q. But you would agree with me as a lawyer, if you
9 don't like a ruling, you can appeal it.

10 MR. BETRAS: Objection, your Honor.

11 THE COURT: Objection sustained.

12 A. In the case of ATF —

13 THE COURT: Objection sustained.

14 Q. And when it comes to an ATF ruling, if you don't
15 like the ATF ruling, if you don't like the ATF ruling,
16 you can appeal their decision?

17 MR. BETRAS: Objection, your Honor.

18 THE COURT: Objection sustained.

19 MS. HENDERSON: Can I have a moment, your
20 Honor?

21 (Pause.)

22 BY MS. HENDERSON:

23 Q. Mr. Howard, you would agree with me that regardless
24 of whatever the rule is you can't just disregard the law
25 and do your own thing?

Mr. Howard - Redirect

1 MR. BETRAS: Objection, your Honor.

2 THE COURT: Overruled.

3 A. Can you repeat the question?

4 Q. You would agree with me that regardless of what the
5 rule is you can't just disregard it and do your own
6 thing?

7 A. If you fall within the rule, yes.

8 MS. HENDERSON: Thank you. I have no
9 further questions at this time.

10 THE COURT: Thank you. Anything?

11 MR. BETRAS: Yes, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. BETRAS

14 Q. Mr. Howard, am I paying you for your time, or am I
15 paying you for your opinion?

16 A. I can't hear you with your back turned. I'm sorry.
17 A lifetime of gun fire and rock and roll, and I am paying
18 the price now.

19 Q. Am I paying you for your time, or am I paying you
20 for your opinion?

21 A. You are paying for my time and nothing
22 more.

23 Q. Okay. And you don't work for free, right?

24 A. No, I don't. I have got to make a living like
25 everybody else.

Mr. Howard - Redirect

1 Q. All right. Does the fact that you were retained in
2 this case make your opinion any different than what you
3 are calling it as you see it?

4 A. I routinely turn away people whose position I
5 cannot and will not support. I cannot be bought at any
6 price.

7 Q. Now, in light of everything that the U.S. Attorney
8 has asked you and in light of all of her questions, in
9 light in light of all of her, you know, going over your
10 father and the letters and all of that stuff, does that
11 in any way change your opinion in this case?

12 A. No.

13 Q. And your opinion in this case is what?

14 A. That that's a muzzle brake.

15 Q. And not a firearm?

16 A. And not a firearm and not a silencer.

17 MR. BETRAS: Thank you. No further
18 questions.

19 THE COURT: Anything, Ms. Henderson?

20 MS. HENDERSON: Nothing further, your Honor.

21 THE COURT: Thank you, Mr. Howard. You are
22 excused. Watch your step, please.

23 THE WITNESS: Your Honor —

24 THE COURT: You can just leave those there.

25 THE WITNESS: Thank you.

1 THE COURT: Okay. Ladies and gentlemen that
2 will conclude our testimony today. You had a long day.
3 I bet you will sleep tonight. We appreciate your
4 patience for this. We will be in adjournment until
5 tomorrow morning and meet on L1 at 8:30, and keep in mind
6 the admonition.

7 You've heard a lot of testimony. You may or
8 may not have heard it all. You don't know what the law
9 is that applies in the case, and so it is important to
10 keep an open mind, and that you not discuss the case with
11 anyone nor permit anyone to discuss it with you. Have a
12 good night and rest.

13 Remember what I said, you can tell them you
14 are on a case, but don't mention what type of case or
15 anything, and that you will be able to speak about it
16 until your heart's content after a verdict is returned
17 here in open Court. So have a good night, and we will
18 see you bright and early at 8:30.

19 (Jury out.)

20 THE COURT: I will see the lawyers at 8:00
21 o'clock and go over the exhibits, and that's fair.

22 MR. BETRAS: So the Court is aware, I have
23 no further witnesses, and we would rest. I don't know if
24 they have rebuttal or not.

25 THE COURT: I don't either. We will meet at

1 8:00 o'clock, and we will go over that and figure that
2 out.

3 (Trial adjourned at 4:50 p.m.)

4 - - - - -

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6
7 C E R T I F I C A T E

8 I, George J. Staiduhar, Official Court
9 Reporter in and for the United States District Court,
10 for the Northern District of Ohio, Eastern Division,
11 do hereby certify that the foregoing is a true
12 and correct transcript of the proceedings herein.

13
14
15
16 s/George J. Staiduhar
17 George J. Staiduhar,
Official Court Reporter

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